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A scene in the Jefferson Market Police Court, New York

COURTS
AND CRIMINALS

BY

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NEW YORK COUNTY

ILLUSTRATED

NEW YORK
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To

CHARLES ALBERT PERKINS

OF THE NEW YORK BAR

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COURTS AND CRIMINALS

COURTS AND CRIMINALS

CHAPTER I*

The Pleasant Fiction of the Presumption of Innocence

THERE was a great to-do some years ago in the city of New York over an ill-omened young person, Duffy by name, who, falling into the bad graces of the police, was most incontinently dragged to head-quarters and "mugged" without so much as "By your leave, sir," on the part of the authorities. Having been photographed and measured (in most humiliating fashion) he was turned loose with a gratuitous warning to behave himself in the future and see to it that he did nothing which might gain him even more invidious treatment.

Now, although many thousands of equally harmless persons had been similarly treated, this particular outrage was made the occasion of a vehement protest to the mayor of the city by a certain member of the judiciary, who pointed out that such things in a civilized community were shocking beyond measure, and called upon the mayor to remove the commissioner of police and all his staff of deputy commissioners for openly violating the law which they were sworn to uphold. But, the commissioner of police, who had sometimes enforced the penal statutes in a way to make him unpopular with machine politicians, saw nothing wrong in what he had done, and, what was more, said so most outspokenly. The judge said, "You did," and the commissioner said, "I didn't." Specifically, the judge was complaining of what had been done to Duffy, but more generally he was charging the police with despotism and oppression and with systematically disregarding the sacred liberties of the citizens which it was their duty to protect.

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* These essays, which were written between the years 1905-1910, are reprinted without revision, although in a few minor instances the laws may have been changed.

Accordingly the mayor decided to look into the matter for himself, and after a lengthy investigation came to the alleged conclusion that the "mugging" of Duffy was a most reprehensible thing and that all those who were guilty of having any part therein should be instantly removed from office. He, therefore, issued a pronunciamento to the commissioner demanding the official heads of several of his subordinates, which order the commissioner politely declined to obey. The mayor thereupon removed him and appointed a successor, ostensibly for the purpose of having in the office a man who should conduct the police business of the city with more regard for the liberties of the inhabitants thereof. The judge who had started the rumpus expressed himself as very much pleased and declared that now at last a new era had dawned wherein the government was to be administered with a due regard for law.

Now, curiously enough, although the judge had demanded the removal of the commissioner on the ground that he had violated the law and been guilty of tyrannous and despotic conduct, the mayor had ousted him not for pursuing an illegal course in arresting and "mugging" a presumptively innocent man (for illegal it most undoubtedly was), but for inefficiency and maladministration in his department.

Said the mayor in his written opinion:

> "After thinking over this matter with the greatest care, I am led to the conclusion that as mayor of the city of New York I should not order the police to stop taking photographs of people arrested and accused of crime or who have been indicted by grand juries. That grave injustice may occur the Duffy case has demonstrated, but I feel that it is not the taking of the photograph that has given cause to the injustice, but the inefficiency and maladministration of the police department, etc."

In other words, the mayor set the seal of his official approval upon the very practice which caused the injustice to Duffy. "Mugging" was all right, so long as you "mugged" the right persons.

The situation thus outlined was one of more than passing interest. A sensitive point in our governmental nervous system had been touched and a condition uncovered that sooner or later must be diagnosed and cured.

For the police have no right to arrest and photograph a citizen unconvicted of crime, since it is contrary to law. And it is ridiculous to assert that the very guardians of the law may violate it so long as they do so judiciously and do not molest the Duffys. The trouble goes deeper than that.

The truth is that we are up against that most delicate of situations, the concrete adjustment of a theoretical individual right to a practical necessity. The same difficulty has always existed and will always continue to exist whenever emergencies requiring prompt and decisive action arise or conditions obtain that must be handled effectively without too much discussion. It is easy while sitting on the piazza with your cigar to recognize the rights of your fellow-men, you may assert most vigorously the right of the citizen to immunity from arrest without legal cause, but if you saw a seedy character sneaking down a side street at three o'clock in the morning, his pockets bulging with jewelry and silver—! Would you have the policeman on post insist on the fact that a burglary had been committed being established beyond peradventure before arresting the suspect, who in the meantime would undoubtedly escape? Of course, the worthy officer sometimes does this, but his conduct in that case becomes the subject of an investigation on the part of his superiors. In fact, the rules of the New York police department require him to arrest all persons carrying bags in the small hours who cannot give a satisfactory account of themselves. Yet there is no such thing under the laws of the State as a right "to arrest on suspicion." No citizen may be arrested under the statutes unless a crime has actually been committed. Thus, the police regulations deliberately compel every officer either to violate the law or to be made the subject of charges for dereliction of duty. A confusing state of things, truly, to a man who wants to do his duty by himself and by his fellow-citizens!

The present author once wrote a book dealing with the practical administration of criminal justice, in which the unlawfulness of arrest on mere "suspicion" was discussed at length and given a prominent place. But when the time came for publication that portion of it was omitted at the earnest solicitation of certain of the authorities on the ground that as such arrests were absolutely necessary for the enforcement of the criminal law a public exposition of their illegality would do infinite harm. Now, as it seems, the time has come when the facts, for one reason or another, should be faced. The difficulty does not end, however, with "arrest on suspicion," "the third degree," "mugging," or their allied abuses. It really goes to the root of our whole theory of the administration of the criminal law. Is it possible that on final analysis we may find that our enthusiastic insistence upon certain of the supposedly fundamental liberties of the individual has led us into a condition of legal hypocrisy vastly less desirable than the frank attitude of our continental neighbors toward such subjects?

The Massachusetts Constitution of 1785 concludes with the now famous words: "To the end that this may be a government of laws and not of men." That is the essence of the spirit of American government. Our forefathers had arisen and thrown off the yoke of England and her intolerable system of penal government, in which an accused had no right to testify in his own behalf and under which he could be hung for stealing a sheep. "Liberty!" "Liberty or death!" That was the note ringing in the minds and mouths of the signers of the Declaration and framers of the Constitution. That is the popular note to-day of the Fourth of July orator and of the Memorial Day address. This liberty was to be guaranteed *by laws* in such a way that it was never to be curtailed or violated. No mere man was to be given an opportunity to tamper with it. The individual was to be protected at all costs. No king, or sheriff, or judge, or officer was to lay his finger on a free man save at his peril. If he did, the free man might immediately have his "law"—"have the law on him," as the good old expression was—for no king or sheriff was above the law. In fact, we were so energetic in providing safeguards for the individual, even when a wrong-doer, that we paid very little attention to the effectiveness of kings or sheriffs or what we had substituted for them. And so it is to-day. What candidate for office, what silver-tongued orator or senator, what demagogue or preacher could hold his audience or capture a vote if, when it came to a question of liberty, he should lift up his voice in behalf of the rights of the majority as against the individual?

Accordingly in devising our laws we have provided in every possible way for the freedom of the citizen from all interference on the part of the authorities. No one may be stopped, interrogated, examined, or arrested unless a crime has been committed. Every one is presumed to be innocent until shown to be guilty by the verdict of a jury. No one's premises may be entered or searched without a warrant which the law renders it difficult to obtain. Every accused has the right to testify in his own behalf, like any other witness. The fact that he has been held for a crime by a magistrate and indicted by a grand jury places him at not the slightest disadvantage so far as defending himself against the charge is concerned, for he must be proven guilty beyond any reasonable doubt. These illustrations of the jealousy of the *law* for the rights of citizens might be multiplied to no inconsiderable extent. Further, our law allows a defendant convicted of crime to appeal to the highest courts, whereas if he be acquitted the people or State of New York have no right of appeal at all.

Without dwelling further on the matter it is enough to say that in general the State constitutions, their general laws, or penal statutes provide that a person who is accused or suspected of crime must be presumed innocent and treated accordingly until his guilt has been affirmatively established in a jury trial; that meantime he must not be confined or detained unless a crime has in fact been committed and there is at least reasonable cause to believe that he has committed it; and, further, that if arrested he must be given an immediate opportunity to secure bail, to have the advice of counsel, and must in no way be compelled to give any evidence against himself. So much for the law. It is as plain as a pikestaff. It is printed in the books in words of one syllable. So far as the law is concerned we have done our best to perpetuate the theories of those who, fearing that they might be arrested without a hearing, transported for trial, and convicted in a king's court before a king's judge for a crime they knew nothing of, insisted on "liberty or death." They had had enough of kings and their ways. Hereafter they were to have "a government of laws and not of men."

But the unfortunate fact remains that all laws, however perfect, must in the end be administered by imperfect men. There is, alas! no such thing as a government of laws and not of men. You may have a government more of laws and less of men, or vice versa, but you cannot have an auto-administration of the Golden Rule. Sooner or later you come to a man—in the White House, or on a wool sack, or at a desk in an office, or in a blue coat and brass buttons—and then, to a very considerable extent, the question of how far ours is to be a government of laws or of men depends upon him. Generally, so far as he is concerned, it is going to be of man, for every official finds that the letter of the law works an injustice many times out of a hundred. If he is worth his salary he will try to temper justice with mercy. If he is human he will endeavor to accomplish justice *as he sees it* so long as the law can be stretched to accommodate the case. Thus, inevitably there is a conflict between the law and its application. It is the human element in the administration of the law that enables lawyers to get a living. It is usually not difficult to tell what the law is; the puzzle is how it is going to be applied in any individual case. How it *is* going to be applied depends very largely upon the practical side of the matter and the exigencies of existing conditions.

It is pretty hard to apply inflexibly laws over a hundred years old. It is equally hard to police a city of a million or so polyglot inhabitants with a due regard to their theoretic constitutional rights. But suppose in addition that these theoretic rights are entirely theoretic and fly in the face of the laws of nature, experience, and common sense? What then? What is a police commissioner to do who has either got to make an illegal arrest or let a crook get away, who must violate the rights of men illegally detained by outrageously "mugging" them or egregiously fail to have a record of the professional criminals in his bailiwick? He does just what all of us do under similar conditions—he "takes a chance." But in the case of the police the thing is so necessary that there ceases practically to be any "chance" about it. They have got to prevent crime and arrest criminals. If they fail they are out of a job, and others more capable or less scrupulous take their places. The fundamental law qualifying all systems is that of necessity. You can't let professional crooks carry off a voter's silverware simply because the voter, being asleep, is unable instantly to demonstrate beyond a reasonable doubt that his silver has been stolen. You can't permit burglars to drag sacks of loot through the streets of the city at 4 A.M. simply because they are presumed to be innocent until proven guilty. And if "arrest on suspicion" were not permitted, demanded by the public, and required by the police ordinances, away would go the crooks and off would go the silverware, the town would be full of "leather snatchers" and "strong-arm men," respectable citizens would be afraid to go out o' nights, and liberty would degenerate into license. That is the point. We Americans, or at least some of the newer ones of us, have an idea that "liberty" means the right to steal apples from our neighbor's orchard without interference. Now, somewhere or other, there has got to be a switch and a strong arm to keep us in order, and the switch and arm must not wait until the apples are stolen and eaten before getting busy. If we come climbing over the fence sweating apples at every pore, is Farmer Jones to go and count his apples before grabbing us?

The most presumptuous of all presumptions is this "presumption of innocence." It really doesn't exist, save in the mouths of judges and in the pages of the law books. Yet as much to-do is made about it as if it were a living legal principle. Every judge in a criminal case is required to charge the jury in form or substance somewhat as follows: "The defendant is presumed to be innocent until that presumption is removed by competent evidence" . . . "This presumption is his property, remaining with him throughout the trial and until rebutted by the verdict of the jury." . . . "The jury has no right to consider the fact that the defendant stands at the bar accused of a crime by an indictment found by the grand jury." Shades of Sir Henry Hawkins! Does the judge expect that they are actually to swallow that? Here is a jury sworn "to a true verdict find" in the case of an ugly looking customer at the bar who is charged with knocking down an old man and stealing his watch. The old man—an apostolic looking octogenarian—is sitting right over there where the jury can see him. One look at the plaintiff and one at the accused and the jury may be heard to mutter, "He's *guilty*,—all right!"

"Presumed to be innocent?" Why, may I ask? Do not the jury and everybody else know that this good old man would never, save by mistake, accuse anybody falsely of crime? Innocence! Why, the natural and inevitable presumption is that the defendant is guilty! The human mind works intuitively by comparison and experience. We assume or presume with considerable confidence that parents love their children, that all college presidents are great and good men, and that wild bulls are dangerous animals. We may be wrong. But it is up to the other fellow to show us the contrary.

Now, if out of a clear sky Jones accuses Robinson of being a thief we know by experience that the chances are largely in favor of Jones's accusation being well founded. People as a rule don't go rushing around charging each other with being crooks unless they have some reason for it. Thus, at the very beginning the law flies in the face of probabilities when it tells us that a man accused of crime must be presumed to be innocent. In point of fact, whatever presumption there is (and this varies with the circumstances) is all the other way, greater or less depending upon the particular attitude of mind and experience of the individual.

This natural presumption of guilt from the mere fact of the charge is rendered all the more likely by reason of the uncharitable readiness with which we believe evil of our fellows. How unctuously we repeat some hearsay bit of scandal. "I suppose you have heard the report that Deacon Smith has stolen the church funds?" we say to our friends with a sententious sigh—the outward sign of an invisible satisfaction. Deacon Smith after the money-bag? Ha! ha! Of course, he's guilty! These deacons are always guilty! And in a few minutes Deacon Smith is ruined forever, although the fact of the matter may well have been that he was but counting the money in the collection-plate. This willingness to believe the worst of others is a matter of common knowledge and of historical and literary record. "The evil that men do lives after them—" It might well have been put, "The evil men are said to have done lives forever." However unfair, this is a psychologic condition which plays an important part in rendering the presumption of innocence a gross absurdity.

But let us press the history of Jones and Robinson a step further. The next event in the latter's criminal history is his appearance in court before a magistrate. Jones produces his evidence and calls his witnesses. Robinson, through his learned counsel, cross-examines them and then summons his own witnesses to prove his innocence. The proceeding may take several days or perhaps weeks. Briefs are submitted. The magistrate considers the testimony and finally decides that he believes Robinson guilty and must hold him for the action of the grand jury. You might now, it would perhaps seem, have some reason for suspecting that Robinson was not all that he should be. But no! He is still presumed in the eyes of the law, and theoretically in the eyes of his fellows, to be as innocent as a babe unborn. And now the grand jury take up and sift the evidence that has already been gone over by the police judge. They, too, call witnesses and take additional testimony. They likewise are convinced of Robinson's guilt and straightway hand down an indictment accusing him of the crime. A bench warrant issues. The defendant is run to earth and ignominiously haled to court. But he is still presumed to be innocent! Does not the law say so? And is not this a "government of laws"? Finally, the district attorney, who is not looking for any more work than is absolutely necessary, investigates the case, decides that it must be tried and begins to prepare it for trial. As the facts develop themselves Robinson's guilt becomes more and more clear. The unfortunate defendant is given any opportunity he may desire to explain away the charge, but to no purpose.

The district attorney knows Robinson is guilty, and so does everybody else, including Robinson. At last this presumably innocent man is brought to the bar for trial. The jury scan his hang-dog countenance upon which guilt is plainly written.

They contrast his appearance with that of the honest Jones. They know he has been accused, held by a magistrate, indicted by a grand jury, and that his case, after careful scrutiny, has been pressed for trial by the public prosecutor. Do they really presume him innocent? Of course not. They presume him guilty. "So soon as I see him come through dot leetle door in the back of the room, then I know he's guilty!" as the foreman said in the old story. What good does the presumption of innocence, so called, do for the miserable Robinson? None whatever—save perhaps to console him in the long days pending his trial. But such a legal hypocrisy could never have deceived anybody. How much better it would be to cast aside all such cant and frankly admit that the attitude of the continental law toward the man under arrest is founded upon common sense and the experience of mankind. If he is the wrong man it should not be difficult for him to demonstrate the fact. At any rate circumstances are against him, and he should be anxious to explain them away if he can.

The fact of the matter is, that in dealing with practical conditions, police methods differ very little in different countries. The authorities may perhaps keep considerably more detailed "tabs" on people in Europe than in the United States, but if they are once caught in a compromising position they experience about the same treatment wherever they happen to be. In France (and how the apostles of liberty condemn the iniquity of the administration of criminal justice in that country!) the suspect or undesirable receives a polite official call or note, in which he is invited to leave the locality as soon as convenient. In New York he is arrested by a plain-clothes man, yanked down to Mulberry Street for the night, and next afternoon is thrust down the gangplank of a just departing Fall River liner. Many an inspector has earned unstinted praise (even from the *New York Evening Post*) by "clearing New York of crooks" or having a sort of "round-up" of suspicious characters whom, after proper identification, he has ejected from the city by the shortest and quickest possible route. Yet in the case of every person thus arrested and driven out of the town he has undoubtedly violated constitutional rights and taken the law into his own hands.

What redress can a penniless tramp secure against a stout inspector of police able and willing to spend a considerable sum of money in his own defence, and with the entire force ready and eager to get at the tramp and put him out of business? He swallows his pride, if he has any, and ruefully slinks out of town for a period of enforced abstinence from the joys of metropolitan existence. Yet who shall say that, in spite of the fact that it is a theoretic outrage upon liberty, this cleaning out of the city is not highly desirable? One or two comparatively innocent men may be caught in the ruck, but they generally manage to intimate to the police that the latter have "got them wrong" and duly make their escape. The others resume their tramp from city to city, clothed in the presumption of their innocence.

Since the days of the Doges or of the Spanish Inquisition there has never been anything like the morning inspection or "line up" of arrested suspects at the New York police head-quarters.* One by one the unfortunate persons arrested during the previous night (although not charged with any crime) are pointed out to the assembled detective force, who scan them from beneath black velvet masks in order that they themselves may not be recognized when they meet again on Broadway or the darker side streets of the city. Each prisoner is described and his character and past performances are rehearsed by the inspector or head of the bureau. He is then measured, "mugged," and, if lucky, turned loose. What does his liberty amount to or his much-vaunted legal rights if the city is to be made safe? Yet why does not some apostle of liberty raise his voice and cry aloud concerning the wrong that has been done? Are not the rights of a beggar as sacred as those of a bishop?

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* Now abolished.

One of the most sacred rights guaranteed under the law is that of not being compelled to give evidence against ourselves or to testify to anything which might degrade or incriminate us. Now, this is all very fine for the chap who has his lawyer at his elbow or has had some similar previous experience. He may wisely shut up like a clam and set at defiance the tortures of the third degree. But how about the poor fellow arrested on suspicion of having committed a murder, who has never heard of the legal provision in question, or, if he has, is cajoled or threatened into "answering one or two questions"? Few police officers take the trouble to warn those whom they arrest that what they say may be used against them. What is the use? Of course, when they testify later at the trial they inevitably begin their testimony with the stereotyped phrase, "I first warned the defendant that anything which he said might be used against him." If they did warn him they probably whispered it or mumbled it so that he didn't hear what they said, or, in any event, whether they said it or not, half a dozen of them probably took him into a back room and, having set him with his back against the wall, threatened and swore at him until he told them what he knew, or thought he knew, and perhaps confessed his crime. When the case comes to trial the police give the impression that the accused quietly summoned them to his cell to make a voluntary statement. The defendant denies this, of course, but the evidence goes in and the harm has been done. No doubt the methods of the inquisition are in vogue the world over under similar conditions. Everybody knows that a statement by the accused immediately upon his arrest is usually the most important evidence that can be secured in any case. It is a police officer's duty to secure one if he can do so by legitimate means. It is his custom to secure one by any means in his power. As his oath, that such a statement was voluntary, makes it *ipso facto* admissible as evidence, the statutes providing that a defendant cannot be compelled to give evidence against himself are practically nullified.

In the more important cases the accused is usually put through some sort of an inquisitorial process by the captain at the station-house. If he is not very successful at getting anything out of the prisoner the latter is turned over to the sergeant and a couple of officers who can use methods of a more urgent character. If the prisoner is arrested by headquarters detectives, various efficient devices to compel him to "give up what he knows" may be used—such as depriving him of food and sleep, placing him in a cell with a "stoolpigeon" who will try to worm a confession out of him, and the usual moral suasion of a heart-to-heart talk in the back room with the inspector.

This is the darker side of the picture of practical government. It is needless to say that the police do not always suggest the various safeguards and privileges which the law accords to defendants thus arrested, but the writer is free to confess that, save in exceptional cases, he believes the rigors of the so-called third degree to be greatly exaggerated. Frequently in dealing with rough men rough methods are used, but considering the multitude of offenders, and the thousands of police officers, none of whom have been trained in a school of gentleness, it is surprising that severer treatment is not generally met with on the part of those who run afoul of the criminal law. The ordinary "cop" tries to do his duty as effectively as he can. With the average citizen gruffness and roughness go a long way in the assertion of authority. In the task of policing a big city, the rights of the individual must indubitably suffer to a certain extent if the rights of the multitude are to be properly protected. We can make too much of small injustices and petty incivilities. Police business is not gentle business. The officers are trying to prevent you and me from being knocked on the head some dark night or from being chloroformed in our beds. Ten thousand men are trying to do a thirty-thousand-man job.

The struggle to keep the peace and put down crime is a hard one anywhere. It requires a strong arm that cannot show too punctilious a regard for theoretical rights when prompt decisions have to be made and equally prompt action taken. The thieves and gun men have got to be driven out. Suspicious characters have got to be locked up. Somehow or other a record must be kept of professional criminals and persons likely to be active in law-breaking. These are necessities in every civilized country. They are necessities here. Society employs the same methods of self-protection the world over. No one presumes a person charged with crime to be innocent, either in Delhi, Pekin, Moscow, or New York. Under proper circumstances we believe him guilty. When he comes to be tried the jury consider the evidence, and if they are reasonably sure he is guilty they convict him. The doctrine of reasonable doubt is almost as much of a fiction as that of the presumption of innocence. From the time a man is arrested until arraignment he is quizzed with a view to inducing him to admit his offence or give some evidence that may help convict him. Logically, why *should* not a person charged with a crime be obliged to give what explanation he can of the affair? Why *should* he have the privilege of silence? Doesn't he owe a duty to the public the same as any other witness? If he is innocent he has nothing to fear; if he is guilty—away with him! The French have no false ideas about such things and at the same time they have a high regard for liberty. We merely cheat ourselves into thinking that *our* liberty is something different from French liberty because we have a lot of laws upon our statute books that are there only to be disregarded and would have to be repealed instantly if enforced.

Take, for instance, the celebrated provision of the penal laws that the failure of an accused to testify in his own behalf shall not be taken against him. Such a doctrine flies in the face of human nature. If a man sits silent when witnesses under oath accuse him of a crime it is an inevitable inference that he has nothing to say—that no explanation of his would explain. The records show that the vast majority of accused persons who do not avail themselves of the opportunity to testify are convicted. Thus, the law which permits a defendant to testify in reality compels him to testify, and a much-invoked safeguard of liberty turns out to be a privilege in name only. In France or America alike a man accused of crime sooner or later has to tell what he knows—or take his medicine. It makes little difference whether he does so under the legalized interrogation of a "juge d'instruction" in Paris or under the quasi-voluntary examination of an assistant district attorney or police inspector in New York. It is six of one and half a dozen of the other if at his trial in France he remains mute under examination or in America refrains from availing himself of the privilege of testifying in his own behalf.

Thus, we are reluctantly forced to the conclusion that all human institutions have their limitations, and that, however theoretically perfect a government of laws may be, it must be administered by men whose chief regard will not be the idealization of a theory of liberty so much as an immediate solution of some concrete problem.

Not that the matter, after all, is particularly important to most of us, but laws which exist only to be broken create a disrespect and disregard for law which may ultimately be dangerous. It would be perfectly simple for the legislature to say that a citizen might be arrested under circumstances tending to create a reasonable suspicion, even if he had not committed a crime, and it would be quite easy to pass a statute providing that the commissioner of police might "mug" and measure all criminals immediately after conviction. As it is, the prison authorities won't let him, so he has to do it while he has the opportunity.

It must be admitted that this is rather hard on the innocent, but they now have to suffer with the guilty for the sins of an indolent and uninterested legislature. Moreover, if such a right of arrest were proposed, some wiseacre or politician would probably rise up and denounce the suggestion as the first step in the direction of a military dictatorship. Thus, we shall undoubtedly fare happily on in the blissful belief that our personal liberties are the subject of the most solicitous and zealous care on the part of the authorities, guaranteed to us under a government which is not of men but of laws, until one of us happens to be arrested (by mistake, of course) and learns by sad experience the practical methods of the police in dealing with criminals and the agreeable but deceptive character of the pleasant fiction of the presumption of innocence.

CHAPTER II

Preparing a Criminal Case for Trial

WHEN the prosecuting attorney in a great criminal trial arises to open the case to the impanelled jury, very few, if any, of them have the slightest conception of the enormous expenditure of time, thought and labor which has gone into the preparation of the case and made possible his brief and easily delivered speech. For in this opening address of his there must be no flaw, since a single misstated or overstated fact may prejudice the jury against him and result in his defeat. Upon it also depends the jury's first impression of the case and of the prosecutor himself—no inconsiderable factor in the result. In a trial of importance its careful construction with due regard to what facts shall be omitted (in order to enhance their dramatic effect when ultimately proven) may well occupy the district attorney every evening for a week. But if the speech itself has involved study and travail, it is as nothing compared with the amount required by that most important feature of every criminal case—the selection of the jury.

For a month before the trial, or whenever it may be that the jury has been drawn, every member upon the panel has been subjected to an unseen scrutiny. The prosecutor, through his own or through hired sleuths, has examined into the family history, the business standing and methods, the financial responsibility, the political and social affiliations, and the personal habits and "past performances" of each and every talesman. When at the beginning of the trial they, one by one, take the witness-chair (on what is called the *voir dire*) to subject themselves to an examination by both sides as to their fitness to serve as jurors in the case, the district attorney probably has close at hand a rather detailed account of each, and perchance has great difficulty in restraining a smile when some prospective juror, in his eagerness either to serve or to escape, deliberately equivocates in answer to an important question as to his personal history.

"Are you acquainted with the accused or his family?" mildly inquires the assistant prosecutor.

"No—not at all," the talesman may blandly reply.

The answer, perhaps, is literally true, and yet the prosecutor may be pardoned for murmuring "Liar!" to himself as he sees that his memorandum concerning the juror's qualifications states that he belongs to the same "lodge" with the prisoner's uncle by marriage and carries an open account on his books with the defendant's father.

"I think we will excuse Mr. Ananias," politely remarks the prosecutor; then in an undertone he turns to his chief and mutters: "The old rascal! He would have knifed us if we'd given him the chance!" And all this time the disgruntled Mr. Ananias is wondering why, if he didn't "know the defendant or his family," he was not accepted as a juror.

Of course, every district attorney has, or should have, information as to each talesman's actual capabilities as a juror and something of a record as to how he has acted under fire. If he is a member of the "special" panel, it is easy to find out whether he has ever acquitted or convicted in any *cause celèbre,* and if he has acquitted any plainly guilty defendant in the past it is not likely that his services will be required. If, however, he has convicted in such a case the district attorney may try to lure the other side into accepting him by making it appear that he himself is doubtful as to the juror's desirability. Sometimes persons accused of crime themselves, and actually under indictment, find their way onto the panels, and more than one ex-convict has appeared there in some inexplicable fashion. But to find them out may well require a double shift of men working day and night for a month before the case is called, and what may appear to be the most trivial fact thus discovered may in the end prove the decisive argument for or against accepting the juror.

Panel after panel may be exhausted before a jury in a great murder trial has been selected, for each side in addition to its challenges for "cause" or "bias" has thirty* peremptory ones which it may exercise arbitrarily. If the writer's recollection is not at fault, the large original panel drawn in the first Molineux trial was used up and several others had to be drawn until eight hundred talesmen had been interrogated before the jury was finally selected. It is usual to examine at least fifty in the ordinary murder case before a jury is secured.

It may seem to the reader that this scrutiny of talesmen is not strictly preparation for the trial, but, in fact, it is fully as important as getting ready the facts themselves; for a poor jury, either from ignorance or prejudice, will acquit on the same facts which will lead a sound jury to convict. A famous prosecutor used to say, "Get your jury —the case will take care of itself."

But as the examination of the panel and the opening address come last in point of chronology it will be well to begin at the beginning and see what the labors of the prosecutor are in the initial stages of preparation. Let us take, for example, some notorious case, where an unfortunate victim has died from the effects of a poisoned pill or draught of medicine, or has been found dead in his room with a revolver bullet in his heart. Some time before the matter has come into the hands of the prosecutor, the press and the police have generally been doing more or less (usually less) effective work upon the case. The yellow journals have evolved some theory of who is the culprit and have loosed their respective reporters and "special criminologists" upon him. Each has its own idea and its own methods—often unscrupulous. And each has its own particular victim upon whom it intends to fasten the blame. Heaven save his reputation! Many an innocent man has been ruined for life through the efforts of a newspaper "to make a case," and, of course, the same thing, though happily in a lesser degree, is true of the police and of some prosecutors as well.

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* In the State of New York.

In every great criminal case there are always four different and frequently antagonistic elements engaged in the work of detection and prosecution —first, the police; second, the district attorney; third, the press; and, lastly, the personal friends and family of the deceased or injured party. Each for its own ends—be it professional pride, personal glorification, hard cash, or revenge—is equally anxious to find the evidence and establish a case. Of course, the police are the first ones notified of the commission of a crime, but as it is now almost universally their duty to inform at once the coroner and also the district attorney thereof, a tripartite race for glory frequently results which adds nothing to the dignity of the administration of criminal justice.

The coroner is at best no more than an appendix to the legal anatomy, and frequently he is a disease. The spectacle of a medical man of small learning and less English trying to preside over a court of first instance is enough to make the accused himself chuckle for joy.

Not long ago the coroners of New York discovered that, owing to the fact that the district attorney or his representatives generally arrived first at the scene of any crime, there was nothing left for the "medicos" to do, for the district attorney would thereupon submit the matter at once to the grand jury instead of going through the formality of a hearing in the coroner's court. The legal medicine men felt aggrieved, and determined to be such early birds that no worm should escape them. Accordingly, the next time one of them was notified of a homicide he raced his horse down Madison Avenue at such speed that he collided with a trolley car and broke his leg.

Another complained to the district attorney that the assistants of the latter, who had arrived at the scene of an asphyxiation before him, had bungled everything.

"Ach, dose young men!" he exclaimed, wringing his hands—"Dose young men, dey come here und dey opened der vindow und let out der gas und all mine evidence esgaped."

It is said that this interesting personage once instructed his jury to find that "the diseased came to his death from an ulster on the stomach."

These anecdotes are, perhaps, what judges would call *obiter dicta,* yet the coroner's court has more than once been utilized as a field in the actual preparation of a criminal case. When Roland B. Molineux was first suspected of having caused the death of Mrs. Adams by sending the famous poisoned package of patent medicine to Harry Cornish through the mails, the assistant district attorney summoned him as a witness to the coroner's court and attempted to get from him in this way a statement which Molineux would otherwise have refused to make.

When all the first hullabaloo is over and the accused is under arrest and safely locked up, it is usually found that the police have merely run down the obvious witnesses and made a *prima facie* case. All the finer work remains to be done either by the district attorney himself or by the detective bureau working under his immediate direction or in harmony with him. Little order has been observed in the securing of evidence. Every one is a fish who runs into the net of the police, and all is grist that comes to their mill. The district attorney sends for the officers who have worked upon the case and for the captain or inspector who has directed their efforts, takes all the papers and tabulates all their information. His practiced eye shows him at once that a large part is valueless, much is contradictory, and all needs careful elaboration. A winnowing process occurs then and there; and the officers probably receive a "special detail" from headquarters and thereafter take their orders from the prosecutor himself. The detective bureau is called in and arrangements made for the running down of particular clues. Then he will take off his coat, clear his desk, and get down to work.

Of course, his first step is to get all the information he can as to the actual facts surrounding the crime itself. He immediately subpœnas all the witnesses, whether previously interrogated by the police or not, who know anything about the matter, and subjects them to a rigorous cross-examination. Then he sends for the police themselves and cross-examines *them*. If it appears that any witnesses have disappeared he instructs his detectives how and where to look for them. Often this becomes in the end the most important element in the preparation for the trial. Thus in the Nan Patterson case the search for and ultimate discovery of Mr. and Mrs. Morgan Smith (the sister and brother-in-law of the accused) was one of its most dramatic features. After they had been found it was necessary to indict and then to extradite them in order to secure their presence within the jurisdiction, and when all this had been accomplished it proved practically valueless.

It frequently happens that an entire case will rest upon the testimony of a single witness whose absence from the jurisdiction would prevent the trial. An instance of such a case was that of Albert T. Patrick, for without the testimony of his alleged accomplice—the valet, Jones—he could not have been convicted of murder. The preservation of such a witness and his testimony thus becomes of paramount importance, and rascally witnesses sometimes enjoy considerable ease, if not luxury, at the expense of the public while waiting to testify. Often, too, a case of great interest will arise where the question of the guilt of the accused turns upon the evidence of some one person who, either from mercenary motives or because of "blood and affection," is unwilling to come to the fore and tell the truth. A striking case of this sort occurred some ten years ago. The "black sheep" of a prominent New York family forged the name of his sister to a draft for thirty thousand dollars. This sister, who was an elderly woman of the highest character and refinement, did not care to pocket the loss herself and declined to have the draft debited to her account at the bank. A lawsuit followed, in which the sister swore that the name signed to the draft was not in her handwriting. She won her case, but some officious person laid the matter before the district attorney. The forger was arrested and his sister was summoned before the grand jury. Here was a pleasant predicament. If she testified for the State her brother would undoubtedly go to prison for many years, to say nothing of the notoriety for the entire family which so sensational a case would occasion. She, therefore, slipped out of the city and sailed for Europe the night before she was to appear before the grand jury. Her brother was in due course indicted and held for trial in large bail, but there was and is no prospect of convicting him for his crime so long as his sister remains in the voluntary exile to which she has subjected herself. She can never return to New York to live unless something happens either to the indictment or her brother, neither of which events seems likely in the immediate future.

Perhaps, if the case is one of shooting, the weapon has vanished. Its discovery may lead to the finding of the murderer. In one instance where a body was found in the woods with a bullet through the heart, there was nothing to indicate who had committed the crime. The only scintilla of evidence was an exploded cartridge—a small thing on which to build a case. But the district attorney had the hammer marks upon the cap magnified several hundred times and then set out to find the rifle which bore the hammer which had made them. Thousands of rifles all over the State were examined. At last in a remote lumber camp was found the weapon which had fired the fatal bullet. The owner was arrested, accused of the murder, and confessed his crime. In like manner, if it becomes necessary to determine where a typewritten document was prepared the letters may be magnified, and by examining the ribbons of suspected machines the desired fact may be ascertained. The magnifying glass still plays an important part in detecting crime, although usually in ways little suspected by the general public.

On the other hand, where the weapon has not been spirited away the detectives may spend weeks in discovering when and where it was purchased. Every pawnshop, every store where a pistol could be bought, is investigated, and under proper circumstances the requisite evidence to show deliberation and premeditation may be secured.

These investigations are naturally conducted at the very outset of the preparation of the case.

The weapon, in seven trials out of ten, is the most important thing in it. By its means it can generally be demonstrated whether the shooting was accidental or intentional—and whether or not the killing was in self-defence.

Where this last plea is interposed it is usually made at once upon the arrest, the accused explaining to the police that he fired only to save his own life. In such a situation, where the killing is admitted, practically the entire preparation will centre upon the most minute tests to determine whether or not the shot was fired as the accused claims that it was. The writer can recall at least a dozen cases in his own experience where the story of the defendant, that the revolver was discharged in a hand-to-hand struggle, was conclusively disproved by experimenting with the weapon before the trial. There was one homicide in which a bullet perforated a felt cap and penetrated the forehead of the deceased. The defendant asserted that he was within three feet of his victim when he fired, and that the other was about to strike him with a bludgeon. A quantity of felt, of weight similar to that of the cap, was procured and the revolver discharged at it from varying distances. A microscopic examination showed that certain discolorations around the bullet-hole (claimed by the defence to be burns made by the powder) were, in fact, grease marks, and that the shot must have been fired from a distance of about fifteen feet. The defendant was convicted on his own story, supplemented by the evidence of the witness who made the tests.

The most obvious and first requirement is, as has been said, to find the direct witnesses to the facts surrounding the crime, commit their statements under oath to writing, so that they cannot later be denied or evaded, and make sure that these witnesses will not only hold no intercourse with the other side, but will be on hand when wanted. This last is not always an easy task, and various expedients often have to be resorted to, such as placing hostile witnesses under police surveillance, or in some cases in "houses of detention," and hiding others in out-of-the-way places, or supplying them with a bodyguard if violence is to be anticipated. When the proper time comes the favorable witnesses must be duly drilled or coached, which does not imply anything improper, but means merely that they must be instructed how to deliver their testimony, what answers are expected to certain questions, and what facts it is intended to elicit from them. Witnesses are often offended and run amuck because they are not given a chance upon the stand to tell the story of their lives. This must be guarded against and steps taken to have their statements given in such a way that they are audible and intelligible. A few lessons in elementary elocution are generally vitally necessary. The man with the bassoon voice must be tamed, and the birdlike old lady made to chirp more loudly. But all this is the self-evident preparation which must take place in every case, and while highly important is of far less interest than the development of the circumstantial evidence which is the next consideration of the district attorney.

The discovery and proper proof of minute facts which tend to demonstrate the guilt of an accused are the joy of the natural prosecutor, and he may in his enthusiasm spend many thousands of dollars on what seems, and often is, an immaterial matter. Youthful officials intrusted with the preparation of important cases often become unduly excited and forget that the taxpayers are paying the bills. The writer remembers sitting beside one of these enthusiasts during a celebrated trial. A certain woman witness had incidentally testified to a remote meeting with the deceased at which a certain other woman was alleged to have been present. The matter did not seem of much interest or importance, but the youth in question seized a yellow pad and excitedly wrote in blue pencil, "Find Birdie" (the other lady) "at any cost!" This he handed to a detective, who hastened importantly away. It is to be hoped that "Birdie" was found speedily and in an inexpensive manner.

When the case against Albert T. Patrick, later convicted of the murder of the aged William M. Rice, was in course of preparation, it was found desirable to show that Patrick had called up his accomplice on the telephone upon the night of the murder. Accordingly, the telephone company was compelled to examine several hundred thousand telephone slips to determine whether or not this had actually occurred. While the fact was established in the affirmative, the company now destroys its slips in order not to have to repeat the performance a second time.

Likewise, in the preparation of the Molineux case it became important to demonstrate that the accused had sent a letter under an assumed name ordering certain remedies. As a result, one of the employees of the patent-medicine company spent several months going over their old mail orders and comparing them with a certain sample, until at last the letter was unearthed. Of course, the district attorney had to pay for it, and it was probably worth what it cost to the prosecution, although Molineux's conviction was reversed by the Court of Appeals and he was acquitted upon his second trial.

The danger is, however, that a prosecutor who has an unlimited amount of money at his disposal may be led into expenditures which are hardly justified simply because he thinks they may help to secure a conviction. Nothing is easier than to waste money in this fashion, and public officials sometimes spend the county's money with considerably more freedom than they would their own under similar circumstances.

The legitimate expenses connected with the preparation of every important case are naturally large. For example, diagrams must be prepared, photographs taken of the place of the crime, witnesses compensated for their time and their expenses paid, and, most important of all, competent experts must be engaged. This leads us to an interesting aspect of the modern jury trial.

When no other defence to homicide is possible the claim of insanity is frequently interposed. Nothing is more confusing to the ordinary juryman than trying to determine the probative value of evidence touching unsoundness of mind, and the application thereto of the legal test of criminal responsibility. In point of fact, juries are hardly to be blamed for this, since the law itself is antiquated and the subject one abounding in difficulty. Unfortunately the opportunity for vague yet damaging testimony on the part of experts, the ease with which any desired opinion can be defended by a slight alteration in the hypothetical facts, and the practical impossibility of exposure, have been seized upon with avidity by a score or more of unscrupulous alienists who are prepared to sell their services to the highest bidder. These men are all the more dangerous because, clever students of mental disease and thorough masters of their subject as they are, they are able by adroit qualifications and skilful evasions to make half-truths seem as convincing as whole ones. They ask and receive large sums for their services, and their dishonest testimony must be met and refuted by the evidence of honest physicians, who, by virtue of their attainments, have a right to demand substantial fees. Even so, newspaper reports of the expense to the State of notorious trials are grossly exaggerated. The entire cost of the first Thaw trial to the County of New York was considerably less than twenty thousand dollars, and the second trial not more than half that amount. To the defence, however, it was a costly matter, as the recent schedules in bankruptcy of the defendant show. Therein it appears that one of his half-dozen counsel still claims as owing to him for his services on the first trial the modest sum of thirty-five thousand dollars! The cost of the whole defence was probably ten times that sum. Most of the money goes to the lawyers, and the experts take the remainder.

It goes without saying that both prosecutor and attorney for the defence must be masters of the subject involved. A trial for poisoning means an exhaustive study not only of analytic chemistry, but of practical medicine on the part of all the lawyers in the case, while a plea of insanity requires that, for the time being, the district attorney shall become an alienist, familiar with every aspect of paranoia, *dementia præcox,* and all other forms of mania. He must also reduce his knowledge to concrete, workable form, and be able to defeat opposing experts on their own ground. But such knowledge comes only by prayer and fasting—or, perhaps, rather by months of hard and remorseless grind.

The writer once prosecuted a druggist who had, by mistake, filled a prescription for a one-fourth-grain pill of calomel with a one-fourth-grain pill of morphine. The baby for whom the pill was intended died in consequence. The defence was that the prescription had been properly filled, but that the child was the victim of various diseases, from acute gastritis to cerebro-spinal meningitis. In preparation the writer was compelled to spend four hours every evening for a week with three specialists, and became temporarily a minor expert on children's diseases. To-day he is forced to admit that he would not know a case of acute gastritis from one of mumps. But the druggist was convicted.

Yet it is not enough to prepare for the defence you believe the accused is going to interpose. A conscientious preparation means getting ready for any defence he may endeavor to put in. Just as the prudent general has an eye to every possible turn of the battle and has, if he can, re-enforcements on the march, so the prosecutor must be ready for anything, and readiest of all for the unexpected. He must not rest upon the belief that the other side will concede any fact, however clear it may seem. Some cases are lost simply because it never occurs to the district attorney that the accused will deny something which the State has twenty witnesses to prove. The twenty witnesses are, therefore, not summoned on the day of trial, the defendant does deny it, and as it is a case of word against word the accused gets the benefit of the doubt and, perhaps, is acquitted.

No case is properly prepared unless there is in the court-room every witness who knows anything about any aspect of the case. No one can foretell when the unimportant will become the vital. Most cases turn on an unconsidered point. A prosecutor once lost what seemed to him the clearest sort of a case. When it was all over, and the defendant had passed out of the court-room rejoicing, he turned to the foreman and asked the reason for the verdict.

"Did you hear your chief witness say he was a carpenter?" inquired the foreman.

"Why, certainly," answered the district attorney.

"Did you hear me ask him what he paid for that ready-made pine door he claimed to be working on when he saw the assault?"

The prosecutor recalled the incident and nodded.

"Well, he said ten dollars—and I knew he was a liar. A door like that don't cost but four-fifty!"

It is, perhaps, too much to require a knowledge of carpentry on the part of a lawyer trying an assault case. Yet the juror was undoubtedly right in his deduction.

In a case where insanity is the defence, the State must dig up and have at hand every person it can find who knew the accused at any period of his career. He will probably claim that in his youth he was kicked in a game of foot-ball and fractured his skull, that later he fell into an elevator shaft and had concussion of the brain, or that he was hit on the head by a burglar. It is usually difficult, if not impossible, to disprove such assertions, but the prosecutor must be ready, if he can, to show that foot-ball was not invented until after the defendant had attained maturity, that it was some other man who fell down the elevator shaft, and to produce the burglar to deny that the assault occurred. Naturally, complete preparation for an important trial demands the presence of many witnesses who ultimately are not needed and who are never called. Probably in most such cases about half the witnesses do not testify at all.

Most of what has been said relates to the preparation for trial of cases where the accused is already under arrest when the district attorney is called into the case. If this stage has not been reached the prosecutor may well be called upon to exercise some of the functions of a detective in the first instance.

A few years ago it was brought to the attention of the New York authorities that many blackmailing letters were being received bearing the name of "Lewis Jarvis." These were of a character to render the apprehension of the writer of them a matter of much importance. The letters directed that the replies be sent to a certain box in the New York post-office, but as the boxes are numerous and close together it seemed doubtful if "Lewis Jarvis" could be detected when he called for his mail. The district attorney, the police, and the post-office officials finally evolved the scheme of plugging the lock of "Lewis Jarvis's" box with a match. The scheme worked, for "Jarvis," finding that he could not use his key, went to the delivery window and asked for his mail. The very instant the letters reached his hand the gyves were upon the wrists of one of the best-known attorneys in the city.

When the district attorney has been apprised that a crime has been committed, and that a certain person is the guilty party, he not infrequently allows the suspect to go his way under the careful watch of detectives, and thus often secures much new evidence against him. In this way it is sometimes established that the accused has endeavored to bribe the witnesses and to induce them to leave the State, while the whereabouts of stolen loot is often discovered. In most instances, however, the district attorney begins where the police leave off, and he merely supplements their labors and prepares for the actual trial itself. But the press he has always with him, and from the first moment after the crime up to the execution of the sentence or the liberation of the accused, the reporters dog his footsteps, sit on his doorstep, and deluge him with advice and information.

Now a curious feature about the evidence "worked up" by reporters for their papers is that little of it materializes when the prosecutor wishes to make use of it. Of course, some reporters do excellent detective work, and there are one or two veterans attached to the criminal courts in New York City who, in addition to their literary capacities, are natural-born sleuths, and combine with a knowledge of criminal law, almost as extensive as that of a regular prosecutor, a resourcefulness and nerve that often win the case for whichever side they espouse. I have frequently found that these men knew more about the cases which I was prosecuting than I did myself, and a tip from them has more than once turned defeat into victory. But newspaper men, for one reason or another, are loath to testify, and usually make but poor witnesses. They feel that their motives will be questioned, and are naturally unwilling to put themselves in an equivocal position. The writer well remembers that in the Mabel Parker case, where the defendant, a young and pretty woman, had boasted of her forgeries before a roomful of reporters, it was impossible, when her trial was called, to find more than one of them who would testify—and he had practically to be dragged to the witness chair. In point of fact, if reporters made a practice of being witnesses it would probably hurt their business. But, however much "faked" news may be published, a prosecutor who did not listen to all the hints the press boys had to give would make a great mistake; and as allies and advisers they are often invaluable, for they can tell him where and how to get evidence of which otherwise he would never hear.

The week before a great case is called is a busy one for the prosecutor in charge. He is at his office early to interview his main witnesses and go over their testimony with them so that their regular daily work may not be interrupted more than shall be actually necessary. Some he cautions against being over-enthusiastic and others he encourages to greater emphasis. The bashful "cop" is badgered until at last he ceases to begin his testimony in the cut-and-dried police fashion.

"On the morning of the twenty-second of July, about 3.30 A.M., while on post at the corner of Desbrosses Street——," he starts.

"Oh, quit that!" shouts the district attorney. "Tell me what you saw in your own words."

The "cop" blushes and stammers:

"Aw, well, on the morning of the twenty-second of July, about 3.30 A.M.——"

"Look here!" yells the prosecutor, jumping to his feet and shaking his fist at him, "do you want to be taken for a d—n liar? 'Morning of the twenty-second of July, about 3.30 A.M., while on post!' You never talked like that in your life."

By this time the "cop" is "mad clear *through*."

"I'm no liar!" he retorts. "I saw the — pull his gun and shoot!"

"Well, why didn't you say so?" laughs the prosecutor, and the officer mollified with a cigar, dimly preceives the objectionable feature of his testimony.

About this time one of the sleuths comes in to report that certain much-desired witnesses have been "located" and are in custody downstairs. The assistant makes immediate preparation for taking their statements. Then one of the experts comes in for a chat about a new phase of the case occasioned by the discovery that the defendant actually did have spasms when an infant. The assistant wisely makes an appointment for the evening. A telegram arrives saying that a witness for the defence has just started for New York from Philadelphia and should be duly watched on arrival. The district attorney sends for the assistant to inquire if he has looked up the law on similar cases in Texas and Alabama—which he probably has not done; and a friend on the telephone informs him that Tomkins, who has been drawn on the jury, is a boon companion of the prisoner and was accustomed to play bridge with him every Sunday night before the murder.

Coincidently, some private detectives enter with a long report on the various members of the panel, including the aforesaid Tomkins, whom they pronounce to be "all right," and as never having, to their knowledge, laid eyes on the accused. Finally, in despair, the prosecutor locks himself in his library with a copy of the Bible, "Bartlett's Familiar Quotations," and a volume of celebrated speeches, to prepare his summing up, for no careful trial lawyer opens a case without first having prepared, to some extent, at least, his closing address to the jury. He has thought about this for weeks and perhaps for months. In his dreams he has formulated syllogisms and delivered them to imaginary yet obstinate talesman. He has glanced through many volumes for similes and quotations of pertinency. He has tried various arguments on his friends until he knows just how, if he succeeds in proving certain facts and the defence expected is interposed, he is going to convince the twelve jurors that the defendant is guilty and, perhaps, win an everlasting reputation as an orator himself.

This superficial sketch of how an important criminal case is got ready for trial would be incomplete without some further reference to something which has been briefly hinted at before—preparation upon its purely legal aspect. This may well demand almost as much labor as that required in amassing the evidence. Yet a careful and painstaking investigation of the law governing every aspect of the case is indispensable to success. The prosecutor with a perfectly clear case may see the defendant walk out of court a free man, simply because he has neglected to acquaint himself with the various points of law which may arise in the course of the trial, and the lawyer for an accused may find his client convicted upon a charge to which he has a perfectly good legal defence, for the same reason.

Looking at it from the point of view of the prisoner's counsel, it is obvious that it is quite as efficacious to free your client on a point of law, without having the case go to the jury at all, as to secure an acquittal at their hands.

At the conclusion of the evidence introduced in behalf of the State there is always a motion made to dismiss the case on the ground of alleged insufficiency in the proof. This has usually been made the subject of the most exhaustive study by the lawyers for the defence, and requires equal preparation on the part of the prosecutor. The writer recalls trying a bankrupt, charged with fraud, where the lawyer for the defendant had written a brief of some three hundred pages upon the points of law which he proposed to argue to the court upon his motion to acquit. But, unfortunately, his client pleaded guilty and the volume was never brought into play.

But a mastery of the law, a thorough knowledge and control of the evidence, a careful preparation for the opening and closing addresses, and an intimate acquaintance with the panel from which the jury is to be drawn are by no means the only elements in the preparation for a great legal battle. One thing still remains, quite as important as the rest—the selection of the best time and the best court for the trial. "A good beginning" in a criminal case means a beginning before the right judge, the proper jury, and at a time when that vague but important influence known as public opinion augurs success. A clever criminal lawyer, be he prosecutor or lawyer for the defendant, knows that all the preparation in the world is of no account provided his case is to come before a stupid or biased judge, or a prejudiced or obstinate jury. Therefore, each side, in a legal battle of importance, studies, as well as it can, the character, connections, and cast of mind of the different judges who may be called upon to hear the case, and, like a jockey at the flag, tries to hurry or delay, as the case may be, until the judicial auspices appear most favorable. A lawyer who has a weak defence seeks to bring the case before a weak judge, or, if public clamor is loud against his client, makes use of every technical artifice to secure delay, by claiming that there are flaws in the indictment, or by moving for commissions to take testimony in distant points of the country. The opportunities for legal procrastination are so numerous that in a complicated case the defence may often delay matters for over a year. This may be an important factor in the final result.

Yet even this is not enough, for, ultimately, it is the judge's charge to the jury which is going to guide their deliberations and, in large measure, determine their verdict. The lawyers for the defence, therefore, prepare long statements of what they either believe or pretend to believe to be the law. These statements embrace all the legal propositions, good or bad, favorable to their side of the case. If they can induce the judge to follow these so much the better for their client, for even if they are not law it makes no difference, since the State has no appeal from an acquittal in a criminal case, no matter how much the judge has erred. In the same way, but not in quite the same fashion, the district attorney prepares "requests to charge," but his desire for favorable instructions should be, and generally is, curbed by the consideration that if the judge makes any mistake in the law and the defendant is convicted he can appeal and upset the case. Of course, some prosecutors are so anxious to convict that they will wheedle or deceive a judge into giving charges which are not only most inimical to the prisoner, but so utterly unsound that a reversal is sure to follow; but when one of these professional bloodhounds is baying upon the trail all he thinks of is a conviction—that is all he wants, all the public will remember; to him will be the glory; and when the case is finally reversed he will probably be out of office. These "requests" cover pages, and touch upon every phase of law applicable or inapplicable to the case. Frequently they number as many as fifty, sometimes many more. It is "up to" the judge to decide "off the bat" which are right and which are wrong. If he guesses that the right one is wrong or the wrong one right the defendant gets a new trial.

CHAPTER III

Sensationalism and Jury Trials

FOR the past twenty-five years we have heard the cry upon all sides that the jury system is a failure, and to this general indictment is frequently added the specification that the trials in our higher courts of criminal justice are the scenes of grotesque buffoonery and merriment, where cynical juries recklessly disregard their oaths and where morbid crowds flock to satisfy the cravings of their imaginations for details of blood and sexuality.

It is unnecessary to question the honesty of those who thus picture the administration of criminal justice in America. Indeed, thus it probably appears to them. But before such an arraignment of present conditions in a highly civilized and progressive nation is accepted as final, it is well to examine into its inherent probabilities and test it by what we know of the actual facts.

In the first place, it should be remembered that the jury was instituted and designed to protect the English freeman from tyranny upon the part of the crown. Judges were, and sometimes still are, the creatures of a ruler or unduly subject to his influence. And that ruler neither was, nor is, always the head of the nation; but just as in the days of the Normans he might have been a powerful earl whose influence could make or unmake a judge, so to-day he may be none the less a ruler if he exists in the person of a political boss who has created the judge before whom his political enemy is to be tried. The writer has seen more than one judge openly striving to influence a jury to convict or to acquit a prisoner at the dictation of such a boss, who, not content to issue his commands from behind the arras, came to the court-room and ascended the bench to see that they were obeyed. Usually the jury indignantly resented such interference and administered a well-merited rebuke by acting directly contrary to the clearly indicated wishes of the judge.

But while admitting its theoretic value as a bulwark of liberty, the modern assailant of the jury brushes the consideration aside by asserting that the system has "broken down" and "degenerated into a farce."

Let us now see how much of a farce it is. If four times out of five a judge rendered decisions that met with general approval, he would probably be accounted a highly satisfactory judge. Now, out of every one hundred indicted prisoners brought to the bar for trial, probably fifteen ought to be acquitted if prosecuted impartially and in accordance with the strict rules of evidence. In the year 1910 the juries of New York County convicted in sixty-six per cent of the cases before them. If we are to test fairly the efficiency of the system, we must deduct from the thirty-four acquittals remaining the fifteen acquittals which were justifiable. By so doing we shall find that in the year 1910 the New York County juries did the correct thing in about eighty-one cases out of every hundred. This is a high percentage of efficiency.* Is it likely that any judge would have done much better?

After a rather long experience as a prosecutor, in which he conducted many hundreds of criminal cases, the writer believes that the ordinary New

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* The following table gives the yearly percentages of convictions and acquittals by verdict in New York County since 1901:

YEAR	NUMBER CONVICTIONS BY VERDICT	NUMBER ACQUITTALS BY VERDICT	CONVICTIONS PER CENT	ACQUITTALS PER CENT
1901	551	344	62	38
1902	419	349	55	45
1903	485	307	61	39
1904	495	357	58	42
1905	489	299	62	38
1906	464	246	65	35
1907	582	264	69	31
1908	649	301	68	32
1909	463	235	66	34
1910	649	325	66	34

York City jury finds a correct general verdict four times out of five. As to talesmen in other localities he has no knowledge or reliable information. It seems hardly possible, however, that juries in other parts of the United States could be more heterogeneous or less intelligent than those before which he formed his conclusions. Of course, jury judgments are sometimes flagrantly wrong. But there are many verdicts popularly regarded as examples of lawlessness which, if examined calmly and solely from the point of view of the evidence, would be found to be the reasonable acts of honest and intelligent juries.

For example, the acquittal of Thaw upon the ground of insanity is usually spoken of as an illustration of sentimentality on the part of jurymen, and of their willingness to be swayed by their emotions where a woman is involved. But few clearer cases of insanity have been established in a court of justice. The district attorney's own experts had pronounced the defendant a hopeless paranoiac; the prosecutor had, at a previous trial, openly declared the same to be his own opinion; and the evidence was convincing. At the time it was rendered, the verdict was accepted as a foregone conclusion. To-day the case is commonly cited as proof of the gullibility of juries and of the impossibility of convicting a rich man of a crime.

There will always be some persons who think that every defendant should be convicted and feel aggrieved if he is turned out by the jury. Yet they entirely forget, in their displeasure at the acquittal of a man whom they instinctively "know" to be guilty, that the jury probably had exactly the same impression, but were obliged under their oaths to acquit because of an insufficiency of evidence.

An excellent illustration of such a case is that of Nan Patterson. She is commonly supposed to have attended, upon the night of her acquittal, a banquet at which one of her lawyers toasted her as "the guilty girl who beat the case." Whether she was guilty or not, there is a general impression that she murdered Cæsar Young. Yet the writer, who was present throughout the trial, felt at the conclusion of the case that there was a fairly reasonable doubt of her guilt. Even so, the jury disagreed, although the case is usually referred to as an acquittal and a monument to the sentimentality of juries.

The acquittal of Roland B. Molineux is also recalled as a case where a man, previously proved guilty, managed to escape. The writer, who was then an assistant district attorney, made a careful study of the evidence at the time, and feels confident that the great majority of the legal profession would agree with him in the opinion that the

Court of Appeals had no choice but to reverse the defendant's first conviction on account of the most prejudicial error committed at the trial, and that the jury who acquitted him upon the second occasion had equally no choice when the case was presented with a proper regard to the rules of evidence and procedure. Indeed, on the second trial the evidence pointed almost as convincingly toward another person as toward the defendant.

I have mentioned the Patterson, Thaw, and Molineux trials because they are cases commonly referred to in support of the general contention that the jury system is a failure. But I am inclined to believe that any single judge, bench of judges, or board of commissioners would have reached the same result as the juries did in these instances.

It is quite true that juries, for rather obvious reasons, are more apt to acquit in murder cases than in others. In the first place, save where the defendant obviously belongs to the vicious criminal class, a jury finds it somewhat difficult to believe, unless overwhelming motive be shown, that he could have deliberately taken another's life. Thus, with sound reason, they give great weight to the plea of self-defence which the accused urges upon them. He is generally the only witness. His story has to be disproved by circumstantial evidence, if indeed there be any. Frequently it stands alone as the only account of the homicide. Thus murder cases are almost always weaker than others, since the chief witness has been removed by death; while at the same time the nature of the punishment leads the jury unconsciously to require a higher degree of proof than in cases where the consequences are less abhorrent. All this is quite natural and inevitable. Moreover, homicide cases as a rule are better defended than others, a fact which undoubtedly affects the result. These considerations apply to all trials for homicide, notorious or otherwise, the results of which in New York County for ten years are set forth in the following table:

YEAR	CONVICTIONS	ACQUITTALS	CONVICTIONS PER CENT	ACQUITTALS PER CENT
1901......	25	17	60	40
1902.......	31	11	74	26
1903......	42	8	84	16
1904......	37	14	72	28
1905......	32	13	71	29
1906.......	53	22	70	30
1907......	39	10	78	22
1908......	35	17	67	33
1909......	43	11	80	20
1910......	45	15	75	25
Total.....	382	138	Av. 73	Av. 27

A popular impression exists at the present time that a man convicted of murder has but to appeal his case on some technical ground in order to secure a reversal, and thus escape the consequences of his crime. How wide of the mark such a belief may be, at least so far as one locality is concerned, is shown by the fact that in New York State, from 1887 to 1907, there were 169 decisions by the Court of Appeals on appeals from convictions of murder in the first degree, out of which there were only twenty-nine reversals. Seven of these defendants were again immediately tried and convicted, and a second time appealed, upon which occasion only two were successful, while five had their convictions promptly affirmed. Thus, so far as the ultimate triumph of justice is concerned, out of 169 cases in that period the appellants finally succeeded in twenty-two only.

Since 1902 there have been twenty-seven decisions rendered in first-degree murder cases by the Court of Appeals, with only three reversals.* The more important convictions throughout the State are affirmed with great regularity.

As to the conduct of such cases, the writer's own experience is that a murder trial is the most solemn proceeding known to the law. He has prosecuted at least fifty men for murder, and convicted more than he cares to remember. Such trials are invariably dignified and deliberate so far as the conduct of the legal side of the case is concerned. No judge, however unqualified for the bench; no prosecutor, however light-minded;

* Written in 1909.

no lawyer, however callous, fails to feel the serious nature of the transaction or to be affected strongly by the fact that he is dealing with life and death. A prosecutor who openly laughed or sneered at a prisoner charged with murder would severely injure his cause. The jury, naturally, are overwhelmed with the gravity of the occasion and the responsibility resting upon them.

In the Patterson, Thaw, and Molineux cases the evidence, unfortunately, dealt with unpleasant subjects and at times was revolting, but there was a quiet propriety in the way in which the witnesses were examined that rendered it as inoffensive as it could possibly be. Outside the court-room the vulgar crowd may have spat and sworn; and inside no doubt there were degenerate men and women who eagerly strained their ears to catch every item of depravity. But the throngs that filled the court-room were quiet and well ordered, and the justified interested outnumbered the morbid.

The writer deprecates the impulse which leads judges, from a feeling that justice should be publicly administered, to throw wide the doors of every court-room, irrespective of the subject-matter of the trial. We need have no fear of Star Chamber proceedings in America, and no harm would be done by excluding from the court-room all persons who have no business there.

It is, of course, not unnatural that in the course of a trial occupying weeks or months the tension should occasionally be relieved by a gleam of humor. After one has been busy trying a case for a couple of weeks one goes to court and sets to work in much the same frame of mind in which one would attack any other business. But the fact that a small boy sometimes sees something funny at a funeral, or a bevy of giggling shop-girls may be sitting in the gallery at a fashionable wedding, argues little in respect to the solemnity or beauty of the service itself.

What are the celebrated cases—the trials that attract the attention and interest of the public? In the first place, they are the very cases which contain those elements most likely to arouse the sympathy and prejudices of a jury—where a girl has taken the life of her supposed seducer, or a husband has avenged his wife's alleged dishonor. Such cases arouse the public imagination for the very reason that every man realizes that there are two sides to every genuine tragedy of this character—the legal and the natural. Thus, aside from any other consideration, they are the obvious instances where justice is most likely to go astray.

In the next place, the defence is usually in the hands of counsel of adroitness and ability; for even if the prisoner has no money to pay his lawyer, the latter is willing to take the case for the advertising he will get out of it.

Third, a trial which lasts for a long time naturally results in creating in the jury's mind an exaggerated idea of the prisoner's rights, namely, the presumption of innocence and the benefit of the reasonable doubt. For every time that the jury will hear these phrases once in a petty larceny or forgery case, they will hear them in a lengthy murder trial a hundred times. They see the defendant day after day, and the relation becomes more personal. Their responsibility seems greater toward him than toward the defendant in petty cases.

Last, as previously suggested, murder cases are apt to be inherently weaker than others, and more often depend upon circumstantial evidence.

The results of such cases are therefore an inadequate test of the efficiency of a jury system. They are, in fact, the precise cases where, if at all, the jury might be expected to go wrong.

But juries would go astray far less frequently even in such trials were it not for that most vicious factor in the administration of criminal justice—the "yellow" journal. For the impression that public trials are the scenes of buffoonery and brutality is due to the manner in which these trials are exploited by the sensational papers.

The instant that a sensational homicide occurs, the aim of the editors of these papers is—not to see that a swift and sure retribution is visited upon the guilty, or that a prompt and unqualified vindication is accorded to the innocent, but, on the contrary, so to handle the matter that as many highly colored "stories" as possible can be run about it.

Thus, where the case is perfectly clear against the prisoner, the "yellow" press seeks to bolster up the defence and really to justify the killing by a thinly disguised appeal to the readers' passions. Not infrequently, while the editorial page is mourning the prevalence of homicide, the front columns are bristling with sensational accounts of the home-coming of the injured husband, the heart-breaking confession of the weak and erring wife, and the sneering nonchalance of the seducer, until a public sentiment is created which, if it outwardly deprecates the invocation of the unwritten law, secretly avows that it would have done the same thing in the prisoner's place.

This antecedent public sentiment is fostered from day to day until it has unconsciously permeated every corner of the community. The juryman will swear that he is unaffected by what he has read, but unknown to himself there are already tiny furrows in his brain along which the appeal of the defence will run.

In view of this deliberate perversion of truth and morals, the euphemisms of a hard-put defendant's counsel when he pictures a chorus girl as an angel and a coarse bounder as a St. George seem innocent indeed. It is not within the rail of the court-room but within the pages of these sensational journals that justice is made a farce. The phrase "contempt of court" has ceased practically to have any significance whatever. The front pages teem with caricatures of the judge upon the bench, of the individual jurors with exaggerated heads upon impossible bodies, of the lawyers ranting and bellowing, juxtaposed with sketches of the defendant praying beside his prison cot or firing the fatal shot in obedience to a message borne by an angel from on high.

How long would the "unwritten law" play any part in the administration of criminal justice if every paper in the land united in demanding, not only in its editorials, but upon its front pages, that private vengeance must cease? Let the "yellow" newspapers confine themselves simply to an accurate report of the evidence at the trial, with a reiterated insistence that the law must take its course. Let them stop pandering to those morbid tastes which they have themselves created. Let the "Sympathy Sisters," the photographer, and the special artist be excluded from the court-room. When these things are done, we shall have the same high standard of efficiency upon the part of the jury in great murder trials that we have in other cases.

CHAPTER IV

Why Do Men Kill?

WHEN a shrewd but genial editor called me up on the telephone and asked me how I should like to write an article on the above lurid title, I laughed in his—I mean the telephone's face.

"My dear fellow!" I said (I should only have the nerve to call him that over a wire). It would ruin me! How could I keep my self-respect and write that kind of sensational stuff—Why do men kill? Why do men eat? Why do men drink? Why do men love? Why do men——"

"Look here!" he interrupted. I want to know why one man kills another man. If we knew why, maybe we could stop it, couldn't we? We could try to, anyhow. And you know something about it. You've prosecuted nearly a hundred men for murder. Get the facts—that's what I want. Cut the adjectives and morality, and get down to the reasons. Anything particularly undignified about that?" And he rang off.

I arose and walked over to the bookcase on which reposed several shelves of "minutes" of criminal trials. They were dusty and depressing. Practically every one of them was a memento of some poor devil gone to prison or to the chair. Where were they now—and *why* did they kill—yes, why *did* they?

I glanced along the red-labeled backs.

"People *versus* Candido." Now why did *he* kill? I remembered the Italian perfectly. He killed his friend because the latter had been too attentive to his wife. "People *versus* Higgins." Why did he? That was a drunken row on a New Year's Eve within the sound of Trinity chimes. "People *versus* Sterling Greene." Yes, he was a colored man—I recalled the evidence—drink and a "yellow gal." "People *versus* Mock Duck"—a Chinese feud between the On Leong Tong and the Hip Sing Tong—a vendetta, first one Chink shot and then another, turn and turn about, running back through Mott Street, New York, Boston, San Francisco, until the origin of the quarrel was lost in the dim Celestial mists across the sea. Out of the first four cases the following motives: Jealousy — 1. Drink — 1. Drink and jealousy—1. Scattering (how can you term a "Tong" row?)—1.

I began to get interested. Supposing I dug out *all* the homicide cases I had ever tried, what would the result show as to motive for the killing? Would drink and women account for seventy-five per cent? Mentally I ran my eye back over nearly ten years. What *other* motives had the defendants at the bar had? There was Laudiero —an Italian "Camorrista"—he had killed simply for the distinction it gave him among his countrymen and the satisfaction he felt at being known as a "bad" man—a "capo maestra." There was Joseph Ferrone—pure jealousy again. Hendry —animal hate intensified by drink. Yoscow—a deliberate murder, planned in advance by several of a gang, to get rid of a young bully who had made himself generally unpleasant. There was Childs, who had killed, as he claimed, in self-defence because he was set upon and assaulted by rival runners from another seaman's boarding house. Really it began to look as if men killed for a lot of reasons.

One consideration at once suggested itself. How about the killings where the murderer is never caught? The prisoners tried for murder are only a mere fraction of those who commit murder. True, and the more deliberate the murder, the greater, unfortunately, the chance of the villain getting away. Still, in cases merely of suspected murder, or in cases where no evidence is taken, it would be manifestly unfair arbitrarily to assign motives for the deed, if deed it was. No, one must start with the assumption, sufficiently accurate under all the circumstances, that the killings in which the killer is caught are fairly representative of killings as a whole.

All crimes naturally tend to divide themselves into two classes—crimes against property and crimes against the person, each class having an entirely different assortment of reasons for their commission.

There can be practically but one motive for theft, burglary, or robbery. It is, of course, conceivable that such crimes might be perpetrated for revenge—to deprive the victim of some highly prized possession. But in the main there is only one object—unlawful gain. So, too, blackmail, extortion, and kidnapping are all the products of the desire for "easy money." But, unquestionably, this is the reason for murder in comparatively few cases.

The usual motive for crimes against the person—assault, manslaughter, mayhem, murder, etc.—is the desire to punish, or be avenged upon another by inflicting personal pain upon him or by depriving him of his most valuable asset—life. And this desire for retaliation or revenge generally grows out of a recent humiliation received at the hands of the other person, a real or fancied wrong to oneself, a member of one's family, or one's property. But this was too easy an answer to my friend's question. He wanted and deserved more than that, and I set out to give it to him.

My first inquiry was in the direction of original sources. I sought out the man in the district attorney's office who had had the widest general experience and put the question to him. This was Mr. Charles C. Nott, Jr., (now judge of the General Sessions) who had been trying murder cases for nearly ten years. It so happened that he had kept a complete record of all of them and this he courteously placed at my disposal. The list contains sixty-two cases, and the defendants were of divers races. These homicides included seventeen committed in cold blood (about twenty-five per cent, an extraordinary percentage) from varying motives, as follows: One defendant (white) murdered his colored mistress simply to get rid of her; another killed out of revenge because the deceased had "licked" him several times before; another, having quarrelled with his friend over a glass of soda water, later on returned and precipitated a quarrel by striking him, in the course of which he killed him; another because the deceased had induced his wife to desert him; another lay in wait for his victim and killed him without the motive ever being ascertained; one man killed his brother to get a sum of money, and another because his brother would not give him money; another because he believed the deceased had betrayed the Armenian cause to the Turks; another because he wished to get the deceased out of the way in order to marry his wife; and another because deceased had knocked him down the day before. One man had killed a girl who had ridiculed him; and one a girl who had refused to marry him; another had killed his daughter because she could no longer live in the house with him; one, an informer, had been the victim of a Black Hand vendetta; and the last had poisoned his wife for the insurance money in order to go off with another woman. There were two cases of infanticide, one in which a woman threw her baby into the lake in Central Park, and another in which she gave her baby poison. Besides these murders, five homicides had been committed in the course of perpetrating other crimes, including burglary and robbery.

Passing over three cases of culpable negligence resulting in death, we come to thirty-seven homicides during quarrels, some of which might have been technically classified as murders, but which being committed "in the heat of passion," in practically every instance resulted in a verdict of manslaughter. The quarrels often arose over the most trifling matters. One was a dispute over a broom, another over a horse blanket, another over food, another over a twenty-five-cent bet in a pool game, another over a loan of fifty cents, another over ten cents in a crap game, and still another over one dollar and thirty cents in a crap game.

Five men were killed in drunken rows which had no immediate cause except the desire to "start something." One man killed another because he had not prevented the theft of some lumber, one (a policeman) because the deceased would not "move on" when ordered, one because a bartender refused to serve him with any more drinks, and one (a bartender) because the deceased insisted that he should serve more drinks. One man was killed in a quarrel over politics, one in a fuss over some beer, one in a card game, one trying to rob a fruit-stand, one in a dispute with a ship's officer, one in a dance hall row. One man killed another whom he found with his wife, and one wife killed her husband for a similar cause; another wife killed her husband simply because she "could not stand him," and one because he was fighting with their son. One man was killed by another who was trying to collect from him a debt of six hundred dollars. One quarrel resulting in homicide arose because the defendant had pointed out deceased to the police, another because the participants called each other names, and another arose out of an alleged seduction. Three homicides grew out of street rows originating in various ways. One man killed another who was fighting with a friend of the first, a janitor was killed in a "continuous row" which had been going on for a long time, and one homicide was committed for "nothing in particular."

This astonishing *olla podrida* of reasons for depriving men of their lives leaves one stunned and confused. Is it possible to deduce any order out of such homicidal chaos? Still, an attempt to classify such diverse causes enables one to reach certain general conclusions. Out of the sixty-two homicides there were seventeen cold-blooded murders, with deliberation and premeditation (in such cases the reasons for the killing are by comparison unimportant); three homicides due to negligence, five committed while perpetrating a felony; thirty-seven manslaughters, due in sixteen cases to quarrels (simply), thirteen to drink, four to disputes over money, three to women, one to race antagonism.

Reclassifying the seventeen murders according to causes, we have: Six due to women, four to quarrels, five to other causes, and two infanticides. Added to the manslaughters previously classified, we have a total of sixty-two killings, due in twenty cases to quarrels, thirteen to drink, nine to women, four to disputes over money, one to race antagonism, five to general causes, three to negligence, two infanticides, five during the commission of other crimes.

The significant features of this analysis are that about seventy-five per cent of the killings were due to quarrels over small sums or other matters, drink and women; over fifty per cent to drink and petty quarrels; and about thirty per cent to quarrels simply. The trifling character of the causes of the quarrels themselves is shown by the fact that in three of these particular cases, tried in a single week, the total amount involved in the disputes was only eighty-five cents. That is about twenty-eight and one-half cents a life. Many a murder in a barroom grows out of an argument over whether a glass of beer has, or has not, been paid for, or whose turn it is to treat; and more than one man has been killed in New York City because he was too clumsy to avoid stepping on somebody's feet or bumping into another man on the sidewalk.

The writer sincerely regrets that his own lack of initiative prevented his keeping a diary during his seven years's service as a prosecutor. It is now impossible for him to refresh his memory as to the causes of all the various homicides which he prosecuted, but where he can do so the evidence points to a conclusion similar to that deduced from Mr. Nott's record. The proximate causes were trifling—the underlying cause was the lack of civilization of the defendant—his brutality and absence of self-control.

With a view to ascertaining conditions in general throughout the United States, I asked a cliping agency to send me the first one hundred notices of actual homicides which should come under its scissors. The immediate result of this experiment was that I received forty-five notices supposedly relating to murders and homicides, which on closer examination proved to be anything but what I wanted for the purpose in view. With only one or two exceptions they related not to deaths from violence reported as having occurred on any particular day, but to notices of convictions, acquittals, indictments, pleas of guilty and not guilty, rewards offered, sentences, executions, "suspicions" of the police, "mysteries revived," and even editorials on capital punishment.

A letter of protest brought in due course, but much more slowly, one hundred and seven clippings, which yielded the following reasons why men killed: There were four suicides, three lynchings, one infanticide, three murders while resisting arrest, three criminals killed while resisting arrest, two men killed in riots, eight murders in the course of committing burglaries and robberies, seven persons killed in vendettas, three race murders, and twenty-four killed in quarrels over petty causes; there were twelve murders from jealousy, followed in four instances by suicide on the part of the murderer; six killings justifiable on the "higher law" theory only, but involving great provocation, and thirty deliberate slaughters. The last clipping recounted how an irate husband pounded a "masher" so hard that he died. Leaving out the suicides and those killed while resisting arrest, there remain one hundred persons murdered, not only by persons insane or wild from the effects of liquor, but by robbers and burglars, brutes, bullies, and thugs, husbands, wives, and lovers, and by a vast number of people who not only destroyed their enemies in the fury of anger, but in many instances openly went out gunning for them, lay in wait for them in the dark, or hacked off their heads with hatchets while they slept.

It is, indeed, a sanguinary record, from which little consolation is to be derived, and the only comfort is the probability that the accounts of the first one hundred murders anywhere in Europe would undoubtedly be just as blood-curdling. I had simply asked the clipping bureau to send me one hundred horrors and I had got them. They did not indicate anything at all so far as the ratio of homicide to population was concerned or as to the blood-thirstiness of Americans in general. They merely showed what despicable things murders were.

As to the reasons for the killings, they were as diverse as those which Mr. Nott had prosecuted, save that there were more of an ultra blood-thirsty character, due probably to the fact that the young lady who did the clipping wanted (after one rebuff) to make sure that I was satisfied with the goods she sent me. And this suggests a reason for the large percentage of cold-blooded killings prosecuted by my friend—namely, that Mr. Nott being the most astute prosecutor available, the district attorney, whenever the latter had a particularly atrocious case, sent it to him in order that the defendant might surely get his full deserts.

The reasons for these homicides were of every sort; police officers and citizens were shot and killed by criminals trying to make "get-aways," and by negroes and others "running amuck"; despondent young men shot their unresponsive sweethearts and then either blew out their own brains or pretended to try to do so; two stable-men had a duel with revolvers, and each killed the other; several men were shot for being too attentive to young women residing in the same hotels; an Italian, whose wife had left him and gone to her mother, went to the house and killed her, her sister, her sister's husband, his mother-in-law, two children, and finally himself; the "Gopher Gang" started a riot at a "benefit" dance given to a widow and killed a man, after which they fled to the woods and fired from cover upon the police until eighteen were overpowered and arrested; a young girl and her fiancé, sitting in the parlor, planning their honeymoon, were unexpectedly interrupted by a rejected suitor of the girl's, who shot and killed both of them; an Italian who peeked into a bedroom, just for fun, afterward rushed in and cut off two persons' heads with an ax—one of them was his wife; a gang of white ruffians shot and then burned a negro family of three peacefully working in the fields; a man who went to the front door to see who had tapped on his window was shot through the heart; a striker was killed by a twenty-five-pound piece of flagging thrown from a roof; there was a gun fight of colored men at Madison, Wisconsin, at which three were shot; a gang of negro ruffians killed and mutilated a white woman (with a baby in her arms) and her husband; masked robbers called a man to his barn at Winston-Salem, North Carolina, and cut his throat; an Italian was found with his head split in two by a butcher's cleaver; a negress in Lafayette, Louisiana, killed a family of six with a hatchet; a negro farmer and his two daughters were lynched and their bodies burned by four white men (who will probably also be lynched if caught); a girl of eleven shot her girl friend of about the same age and killed her; several persons were found stabbed to death; a plumber killed his brother (also a plumber) for saying that he stole two dollars; a murderer was shot by a posse of militia in a cornfield; a card game at Bayonne, New Jersey, resulted in a revolver fight on the street in which one of the players was killed; bank robbers killed a cashier at twelve o'clock noon; a jealous lover in Butte, Montana, shot and killed his sweetheart, her father, and mother; a deputy sheriff was murdered; burglars killed several persons in the course of their business; Kokolosski, a Pole, kicked his child to death; and a couple of dozen people were incidentally shot, stabbed, or otherwise disposed of in the course of quarrels over the most trivial matters. In almost no case was there what an intelligent, civilized man would regard as an adequate reason for the homicide. They killed because they felt like killing, and yielded to the impulse, whatever its immediate origin.

This conclusion is abundantly supported by the figures of the Chicago *Tribune* for the seven years ending in 1900, when carefully analyzed. During this period 62,812 homicides were recorded. Of these there were 17,120 of which the causes were unknown and 3,204 committed while making a justifiable arrest, in self-defence, or by the insane, so that there were in fact only 42,488 felonious homicides the causes of which can be definitely alleged. The ratio of the "quarrels" to this net total is about seventy-five per cent. There were, in addition, 2,848 homicides due to liquor—that is, without cause. Thus eighty per cent of all the murders and manslaughters in the United States for a period of seven years were for no reason at all or from mere anger or habit, arising out of causes often of the most trifling character.

Nor are the conclusions changed by the figures of the years between 1904 and 1909.

During this period 61,786 homicides were recorded. Of these there were 9,302 of which the causes were not known, and 2,480 committed while making a justifiable arrest, in self-defence, or by the insane, leaving 50,004 cases of felonious homicides of known causes. Of these homicides, 33,476 were due to quarrels and 4,799 to liquor, a total of 38,275 out of the 50,004 cases of known causes being traceable in this, another seven years, to motives the most casual.

It would be stupid to allege that the *reason* men killed was *because* they had been stepped on or had been deprived of a glass of beer. The cause lies deeper than that. It rests in the willingness or desire of the murderer to kill at all. Among barbaric or savage peoples this is natural; but among civilized nations it is hardly to be anticipated. If the negro who shoots his fellow because he believes himself to have been cheated out of ten cents were really civilized, he would either not have the impulse to kill or, having the impulse to kill, would have sufficient power of self-control to refrain from doing so. This power of self-control may be natural or acquired, and it may or may not be possessed by the man who feels a desire to commit a homicide. The fact to be observed—the interesting and, broadly speaking, the astonishing fact—is that among a people like ourselves anybody should have a desire to kill. It is even more astonishing than that the impulse should be yielded to so often if it comes.

This, then, is the real reason why men kill—because it is inherent in their state of mind, it is part of their mental and physical make-up—they are ready to kill, they want to kill, they are the kind of men who do kill. This is the result of their heredity, environment, educational and religious training, or the absence of it. How many readers of this paper have ever experienced an actual desire to kill another human being? Probably not one hundredth of one per cent. They belong to the class of people who either never have such an impulse, or at any rate have been taught to keep such impulses under control. Hence it is futile to try to explain that some men kill for a trifling sum of money, some because they feel insulted, others because of political or labor disputes, or because they do not like their food. Any one of these may be the match that sets off the gunpowder, but the real cause of the killing is the fact that the gunpowder is there, lying around loose, and ready to be touched off. What engenders this gunpowder state of mind would make a valuable sociological study, but it may well be that a seemingly inconsequential fact may so embitter a boy or man toward life or the human race in general that in time he "sees red" and goes through the world looking for trouble. Any cause that makes for crime and depravity makes for murder as well. The little boy who is driven out of the tenement onto the street, and in turn off the street by a policeman, until, finding no wholesome place to play, he joins a "gang" and begins an incipient career of crime, may end in the "death house."

The table on the opposite page gives the figures collected by the Chicago *Tribune* for the years from 1881 to 1910.

In view of the foregoing it may seem paradoxical for the writer to state that he questions the alleged unusual tendency to commit murder on the part of citizens of the United States. Yet of one fact he is absolutely convinced—namely, that homicide has substantially decreased in the last fifteen years. Even according to the figures collected by the Chicago *Tribune*, there were but 8,975 homicides in 1910 as compared with 10,500 in 1895, and 10,652 in 1896. Meantime the population of our country has been leaping onward.

We are blood-thirsty enough, God knows, without making things out any worse than they are. Our murder rate per 100,000 unquestionably exceeds that of most of the countries of western Europe, but, as the saying is, "there's a reason." If our homicide statistics related only

Number of Murders and Homicides in the United States Each Year Since 1881, Compared with the Population

YEAR	NUMBER OF MURDERS AND HOMICIDES IN THE UNITED STATES	ESTIMATED POPULATION OF THE UNITED STATES	NUMBER OF MURDERS AND HOMICIDES FOR EACH MILLION OF PEOPLE
1881	1,266	51,316,000	24.7
1882	1,467	....	27.9
1883	1,697	....	31.6
1884	1,465	....	26.7
1885	1,808	56,148,000	32.2
1886	1,499	....	26.1
1887	2,335	....	39.8
1888	2,184	....	36.4
1889	3,567	....	58.2
1890	4,290	62,622,250	68.5
1891	5,906	....	92.4
1892	6,791	....	104.2
1893	6,615	....	99.5
1894	9,800	....	144.7
1895	10,500	69,043,000	152.2
1896	10,652	....	151.3
1897	9,520	....	132.8
1898	7,840	....	107.2
1899	6,225	....	83.6
1900	8,275	75,994,575	108.7
1901	7,852	77,754,000	100.9
1902	8,834	79,117,000	111.7
1903	8,976	....	112.0
1904	8,482	....	......
1905	9,212	....	......
1906	9,350	....	......
1907	8,712	....	......
1908	8,952	....	......
1909	8,103	....	......
1910	8,975	91,972,266	97.5
Total	191,150		

to the white population of even the second generation born in this country we should find, I am convinced, that we are no more homicidal than France and Belgium, and less so than Italy. It is to be expected that with our Chinese, "greaser," and half-breed population in the West, our Black Belt in the South, and our Sicilian and South Italian immigration in the North and East, our murder rate should exceed those of the continental nations, which are nothing if not well policed.

But of one thing we can be abundantly certain without any figures at all, and that is that our present method of administering justice (less the actions of juries than of judges)—the system taken as a whole—offers no deterrent to the embryonic or professional criminal. The administration of justice to-day is not the swift judgment of honest men upon a criminal act, but a clever game between judge and lawyer, in which the action of the jury is discounted entirely and the moves are made with a view to checkmating justice, not in the trial courtroom, but before the appellate tribunal two or three years later.

"My young feller," said a grizzled veteran of the criminal bar to me long years ago, after our jury had gone out, "there's lots of things in this game you ain't got on to yet. Do you think I care what this jury does? Not one mite. I got a nice little error into the case the very first day—

and I've set back ever since. S'pose we *are* convicted? I'll get Jim here [the prisoner] out on a certificate and it'll be two years before the Court of Appeals will get around to the case. Meantime Jim'll be out makin' money to pay me my fee—won't you, Jim? Then your witnesses will be gone, and nobody'll remember what on earth it's all about. You'll be down in Wall Street practicing real law yourself, and the indictment will kick around the office for a year or so, all covered with dust, and then some day I'll get a friend of mine to come in quietly and move to dismiss. And it'll *be* dismissed. Don't you worry! Why, a thousand other murders will have been committed in this county by the time that happens. Bless your soul! You can't go on tryin' the same man forever! Give the other fellers a chance. You shake your head? Well, it's a fact. I've been doin' it for forty years. You'll see." And I did. That may not be why men kill, but perhaps indirectly it may have something to do with it.

CHAPTER V

Detectives and Others

A DETECTIVE, according to the dictionaries, is one "whose occupation it is to discover matters as to which information is desired, particularly wrong-doers, and to obtain evidence to be used against them." A private detective, by the same authority, is one "engaged unofficially in obtaining secret information for or guarding the private interests of those who employ him." The definition emphasizes the official character of detectives in general as contrasted with those whose services may be enlisted for hire by the individual citizen, but the distinction is of little importance, since it is based arbitrarily upon the character of the employer (whether the State or a private client) instead of upon the nature of the employment itself, which is the only thing which is likely to interest us about detectives at all.

The sanctified tradition that a detective was an agile person with a variety of side-whiskers no longer obtains even in light literature, and the most imaginative of us is frankly aware of the fact that a detective is just a common man earning (or pretending to earn) a common living by common and obvious means. Yet in spite of ourselves we are accustomed to attribute superhuman acuteness and a lightning-like rapidity of intellect to this vague and romantic class of fellow-citizens. The ordinary work of a detective, however, requires neither of these qualities. Honesty and obedience are his chief requirements, and if he have intelligence as well, so much the better, provided it be of the variety known as "horse" sense. A genuine candidate for the job of Sherlock Holmes would find little competition. In the first place, the usual work of a detective does not demand any extraordinary powers of deduction at all.

Leaving out of consideration those who are merely private policemen (often in uniform), and principally engaged in patrolling residential streets, preserving order at fairs, race-tracks, and political meetings, or in breaking strikes and preventing riots, the largest part of the work for which detectives are employed is not in the detection of crime and criminals, but in simply watching people, following them, and reporting as accurately as possible their movements. These functions are known in the vernacular as spotting, locating, and trailing. It requires patience, some powers of observation, and occasionally a little ingenuity. The real detective under such circumstances is the man to whom they hand in their reports. Yet much of the most dramatic and valuable work that is done involves no acuteness at all, but simply a willingness to act as a spy and to brave the dangers of being found out.

There is nothing more thrilling in the pages of modern history than the story of the man (James McPartland) who uncovered the conspiracies of the Molly McGuires. But the work of this man was that of a spy pure and simple.

Another highly specialized class of detectives is that engaged in police and banking work, who by experience (or even origin) have a wide and intimate acquaintance with criminals of various sorts, and by their familiarity with the latters' whereabouts, associates, work, and methods are able to recognize and run down the perpetrators of particular crimes.

Thus, for example, there are men in the detective bureau of New York City who know by name, and perhaps have a speaking acquaintance with, a large number of the pick-pockets and burglars of the East Side. They know their haunts and their ties of friendship or marriage. When any particular job is pulled off they have a pretty shrewd idea of who is responsible for it and lay their plans accordingly. If necessary, they run in the whole gang and put each of them through a course of interrogation, accusation, and browbeating until some one breaks down or makes a slip that involves him in a tangle. These men are special policemen whose knowledge makes them detectives by courtesy. But their work does not involve any particular superiority or quickness of intellect—the quality which we are wont to associate with the detection of crime.

Now, if the ordinary householder finds that his wife's necklace has mysteriously disappeared, his first impulse is to send for a detective of some sort or other. In general, he might just as well send for his mother-in-law. Of course, the police can and will watch the pawnshops for the missing baubles, but no crook who is not a fool is going to pawn a whole necklace on the Bowery the very next day after it has been "lifted." Or he can enlist a private detective who will question the servants and perhaps go through their trunks, if they will let him. Either sort will probably line up the inmates of the house for general scrutiny and try to bully them separately into a confession. This may save the master a disagreeable experience, but it is the simplest sort of police work and is done vicariously for the taxpayer, just as the public garbage man relieves you from the burden of taking out the ashes yourself, because he is paid for it, not on account of your own incapacity or his superiority.

The real detective is the one who, taking up the solution of a crime or other mystery, brings to bear upon it unusual powers of observation and deduction and an exceptional resourcefulness in acting upon his conclusions. Frankly, I have known very few such, although for some ten years I have made use of a large number of so-called detectives in both public and private matters. As I recall the long line of cases where these men have rendered service of great value, almost every one resolves itself into a successful piece of mere spying or trailing. Little ingenuity or powers of reason were required. Of course, there are a thousand tricks that an experienced man acquires as a matter of course, but which at first sight seem almost like inspiration. I shall not forget my delight when Jesse Blocher, who had been trailing Charles Foster Dodge through the South (when the latter was wanted as the chief witness against Abe Hummel on the charge of subornation of perjury of which he was finally convicted), told me how he instantly located his man, without disclosing his own identity, by unostentatiously leaving a note addressed to Dodge in a bright-red envelope upon the office counter of the Hotel St. Charles in New Orleans, where he knew his quarry to be staying. A few moments later the clerk saw it, picked it up, and, as a matter of course, thrust it promptly into box No. 420, thus involuntarily hanging, as it were, a red lantern on Dodge's door.

There is no more reason to look for superiority of intelligence or mental alertness among detectives of the ordinary class than there is to expect it from clerks, stationary engineers, plumbers, or firemen. While comparisons are invidious, I should be inclined to say that the ordinary chauffeur was probably a brighter man than the average detective. This is not to be taken in derogation of the latter, but as a compliment to the former. There are a great many detectives of ambiguous training. I remember in one case discovering that of the more important detectives employed by a well-known private Anti-Criminal Society in New York, one had been a street vender of frankfurters (otherwise yclept "hot dogs"), and another the keeper of a bird store, which last perhaps qualified him for the pursuit and capture of human game. There is a popular fiction that lawyers are shrewd and capable, similar to the prevailing one that detectives are astute and cunning. But, as the head of one of the biggest agencies in the country remarked to me the other day, when discussing the desirability of retaining local counsel in a distant city: "You know how hard it is to find a lawyer that isn't a dead one." I feel confident that he did not mean this in the sense that there was no good lawyer except a dead lawyer. What my detective friend probably had in mind was that it was difficult to find a lawyer who brought to bear on a new problem any originality of thought or action. It is even harder to find a detective who is not in this sense a dead one. I have the feeling, being a lawyer myself, that it is harder to find a live detective than a live lawyer. There are a few of both, however, if you know where to look for them. But it is easy to fall into the hands of the Philistines.

The fundamental reason why it is so hard to form any just opinion of detectives in general is that (except by their fruits) there is little opportunity to discriminate between the able and the incapable. Now, the more difficult and complicated his task the less likely is the sleuth (honest or otherwise) to succeed. The chances are a good deal more than even that he will never solve the mystery for which he is engaged. Thus at the end of three months you will have only his reports and his bill—which are poor comfort, to say the least. And yet he may have really worked eighteen hours a day in your service. But a dishonest detective has only to disappear (and take his ease for the same period) and send you *his* reports and *his* bill—and you will have only his word for how much work he has done and how much money he has spent. You are absolutely in his power—unless you hire another detective to watch *him.* Consequently there is no class in the world where the temptation to dishonesty is greater than among detectives. This, too, is, I fancy, the reason that the evidence of the police detective is received with so much suspicion by jurymen—they know that the only way for him to retain his position is by making a record and getting convictions, and hence they are always looking for jobs and frame-ups. If a police detective doesn't make arrests and send a man to jail every once in a while there is no conclusive way for his superiors to be sure he isn't loafing.

There are a very large number of persons who go into the detective business for the same reason that others enter the ministry—they can't make a living at anything else. Provided he has squint eyes and a dark complexion, almost anybody feels that he is qualified to unravel the tangled threads of crime. The first resource of the superannuated or discharged police detective is to start an agency. Of course, he may be first class in spite of these disqualifications, but the presumption in the first instance is that he is no longer alert or effective, and in the second that in one way or another he is not honest. Agencies recruited from deposed and other ex-policemen usually have all the faults of the police without any of their virtues. There are many small agencies which do reliable work, and there are a number of private detectives in all the big cities who work single-handed and achieve excellent results. However, if he expects to accomplish anything by hiring detectives, the layman or lawyer must first make sure of his agency or his man.

One other feature of the detective business should not be overlooked. In addition to charging for services not actually rendered and expenses not actually incurred, there is in many cases a strong temptation to betray the interests of the employer. A private detective may, and usually does, become possessed of information even more valuable to the person who is being watched than to the person to whom he owes his allegiance. Unreliable rascals constantly sell out to the other side and play both ends against the middle. In this they resemble some of the famous diplomatic agents of history. And police detectives employed to run down criminals and protect society have been known instead to act as stalls for bank burglars and (for a consideration) to assist them to dispose of their booty and protect them from arrest and capture. It has repeatedly happened that reliable private detectives have discovered that the police employed upon the same case have in reality been tipping off the criminals as to what was being done and coaching them as to their conduct. Of course the natural jealousy existing between official and unofficial agents of the law leads to many unfounded accusations of this character, but, on the other hand, the fact that much of the most effective police work is done by employing professional criminals to secure information and act as stool-pigeons often results in a definite understanding that the latter shall be themselves protected in the quiet enjoyment of their labors. The relations of the regular police to crime, however, and the general subject of police graft have little place in a chapter of this character.

The first question that usually arises is whether a detective shall or shall not be employed at all in any particular case. Usually the most important thing is to find out what the real character, past, and associations of some particular individual may be. Well-established detective agencies with offices throughout the country are naturally in a better position to acquire such information quickly than the private individual or lawyer, since they are on the spot and have an organized staff containing the right sort of men for the work. If the information lies in your own city you can probably hire some one to get it or ferret it out yourself quite as well, and much more cheaply, than by employing their services. The leads are few and generally simple. The subject's past employers and business associates, his landlords and landladies, his friends and enemies, and his milkman must be run down and interrogated. Perhaps his personal movements must be watched. Any intelligent fellow who is out of a job will do this for you for about $5 a day and expenses. The agencies usually charge from $6 to $8 (and up), and prefer two men to one, as a matter of convenience and to make sure that the subject is fully covered. If the suspect is on the move and trains or steamships must be met, you have practically no choice but to employ a national agency. It alone has the proper plant and equipment for the work. In an emergency, organization counts more than anything else. Where time is of the essence, the individual has no opportunity to hire his own men or start an organization of his own. But if the matter is one where there is plenty of leisure to act, you can usually do your own detective work better and cheaper than any one else.

Regarding the work of the detective as a spy (which probably constitutes seventy-five per cent of his employment to-day), few persons realize how widely such services are being utilized. The insignificant old Irishwoman who stumbles against you in the department store is possibly watching with her cloudy but eagle eye for shoplifters. The tired-looking man on the street-car may, in fact, be a professional "spotter." The stout youth with the *pince nez* who is examining the wedding presents is perhaps a central-office man. All this you know or may suspect. But you are not so likely to be aware that the floor-walker himself is the agent of a rival concern placed in the department store to keep track, not only of prices but of whether or not the wholesalers are living up to their agreements in regard to the furnishing of particular kinds of goods only to one house; or that the conductor on the car is a paid detective of the company, whose principal duty is not to collect fares, but to report the doings of the unions; or that the gentleman who is accidentally introduced to you at the wedding breakfast is employed by a board of directors to get a line on your host's business associates and social companions.

In the great struggle between capital and labor, each side has expended large sums of money in employing confederates to secure secret information as to the plans and doings of the enemy. Almost every labor union has its Judas, and less often a secretary to a capitalist is in the secret employment of a labor union. The railroads must be kept informed of what is going on, and, if necessary, they import a man from another part of the country to join the local organization. Often such men, on account of their force and intelligence, are elected to high office in the brotherhoods whose secrets they are hired to betray. Practically every big manufacturing plant in the United States has on its pay-rolls men acting as engineers, foremen, or laborers who are drawing from $80 to $100 per month as detectives either (1) to keep their employers informed as to the workings of the labor unions, (2) to report to the directors the actual conduct of the business by its salaried officers, superintendents, and overseers, or (3) to ascertain and report to outside competing concerns the methods and processes made use of, the materials utilized, and the exact cost of production.

There are detectives among the chambermaids and bellboys in the hotels, and also among the guests; there are detectives on the passenger lists and in the cardrooms of the Atlantic liners; the colored porter on the private car, the butler at your friend's house, the chorus girl on Broadway, the clerk in the law office, the employee in the commercial agency, may all be drawing pay in the interest of some one else, who may be either a transportation company, a stock-broker, a rival financier, a yellow newspaper, an injured or even an erring wife, a grievance committee, or a competing concern; and the duties of these persons may and will range from the theft of mailing-lists, books, papers, and private letters, up to genuine detective work requiring some real ability.

Detective work of the sort which involves the betrayal of confidences and friendships naturally excites our aversion—yet in many cases the end undoubtedly justifies the means employed, and often there is no other way to avert disaster and prevent fiendish crimes. Sometimes, on the other hand, the information sought is purely for mercenary or even less worthy reasons, and those engaged in these undertakings range from rascals of the lowest type to men who are ready to risk death for the cause which they represent and who are really heroes of a high order. One of the latter with whom I happened to be thrown professionally was a young fellow of about twenty named Guthrie.

It was during a great strike, and outrages were being committed all over the city of New York by dynamiters supposed to be in the employ of the unions. Young Guthrie, who was a reckless dare-devil, offered his services to the employers, and agreed to join one of the local unions and try to find out who were the men blowing up office buildings in process of construction and otherwise terrorizing the inhabitants of the city. Accordingly he applied for membership in the organization, and by giving evidence of his courage and fiber managed to secure a place as a volunteer in the dynamiting squad. So cleverly did he pass himself off as a bitter enemy of capital that he was entrusted with secrets of the utmost value and took part in making the plans and procuring the dynamite to execute them. The quality of his nerve (as well as his foolhardiness) is shown by the fact that he once carried a dress-suit case full of the explosive around the city, jumping on and off street cars, and dodging vehicles. When the proper moment came and the dynamite had been placed in an uncompleted building on Twenty-second Street, Guthrie gave the signal and the police arrested the dynamiters—all of them, including Guthrie, who was placed with the rest in a cell in the Tombs and continued to report to the district attorney all the information which he thus secured from his unsuspecting associates. Indeed, it was hard to convince the authorities that Guthrie was a spy and not a mere accomplice who had turned State's evidence, a distinction of far-reaching legal significance so far as his evidence was concerned.

The final episode in the drama was the unearthing by the police of Hoboken of the secret cache of the dynamiters, containing a large quantity of the explosive. Guthrie's instructions as to how they should find it read like a page from Poe's "Gold Bug." You had to go at night to a place where a lonely road crossed the Erie Railroad tracks in the Hackensack meadows, and mark the spot where the shadow of a telegraph pole (cast by an arc light) fell on a stone wall. This you must climb and walk so many paces north, turn and go so many feet west, and then north again. You then came to a white stone, from which you laid your course through more latitude and longitude until you were right over the spot. The police of Hoboken did as directed, and after tacking round and round the field, found the dynamite. Of course, the union said the whole thing was a plant, and that Guthrie had put the dynamite in the field himself at the instigation of his employers, but before the case came to trial both dynamiters pleaded guilty and went to Sing Sing. One of them turned out to be an ex-convict, a burglar. I often wonder where Guthrie is now. He certainly cared little for his life. Perhaps he is down in Venezuela or Mexico. He could never be aught than a soldier of fortune. But for a long time the employers thought that Guthrie was a detective sent by the unions to compromise *them* in the very dynamiting they were trying to stop!

I once had a particularly dangerous and unfortunate case where a private client was being blackmailed by a half-crazy ruffian who had never seen him, but had selected him arbitrarily as a person likely to give up money. The blackmailer was a German Socialist, who was out of employment—a man of desperate character. He had made up his mind that the world owed him a living, and he had decided that the easiest way to get it was to make some more prosperous person give him a thousand dollars under threat of being exposed as an enemy of society.

The charge was so absurd as to be almost ludicrous, but had my client caused the blackmailer's arrest the matter would have been the subject of endless newspaper notoriety and comment. It was therefore thought wise to make use of other means, and I procured the assistance of a young German-American of my acquaintance, who, in the guise of a vaudeville artist seeking a job, went to the blackmailer's boarding-house and pretended to be looking for an actor friend with a name not unlike that of the criminal.

After two or three visits he managed to scrape an acquaintance with the blackmailer and thereafter spent much time with him. Both were out of work, both were German, and both liked beer. My friend had just enough money to satisfy this latter craving. In a month or so they were intimate friends and used to go fishing together down the bay. At last, after many months, the criminal disclosed to the detective his plan of blackmailing my client, and suggested that as two heads were better than one they had better make it a joint venture. The detective pretended to balk at the idea at first, but was finally persuaded, and at the other's request undertook the delivery of the blackmailing letters to my client! Inside of three weeks he had in his possession enough evidence in the criminal's own handwriting to send him to a prison for the rest of his life. When at last the detective disclosed his identity the blackmailer at first refused to believe him, and then literally rolled on the floor in his agony and fear at discovering how he had been hoodwinked. The next day he disappeared and has not been heard of since, but his letters are in my vault, ready to be used if he again puts in an appearance.

The records of the police and of the private agencies contain many instances where murderers have confessed their guilt long after the crime to supposed friends, who were in reality decoys placed there for that very purpose. It is a peculiarity of criminals that they cannot keep their secrets locked in their own breasts. The impulse to confession is universal, particularly in women. Egotism has some part in this, but the chief element is the desire for companionship. Criminals have a horror of dying under an alias. The dignity of identity appeals even to the tramp. This impulse leads oftentimes to the most unnecessary and suicidal disclosures. The murderer who has planned and executed a diabolical homicide and who has retired to obscurity and safety will very likely in course of time make a clean breast of it to some one whom he believes to be his friend. He wants to "get it off his chest," to talk it over, to discuss its fine points, to boast of how clever he was, to ask for unnecessary advice about his conduct in the future, to have at least one other person in the world who has seen his soul's nakedness.

The interesting feature of such confessions from a legal point of view is that, no matter how circumstantial they may be, they are not usually of themselves sufficient under our law to warrant a conviction. The admission or confession of a defendant needs legal corroboration. This corroboration is often very difficult to find, and frequently cannot be secured at all. This provision of the statutes is doubtless a wise one to prevent hysterical, suicidal, egotistical, and semi-insane persons from meeting death in the electric chair or on the gallows, but it often results in the guilty going unpunished. Personally, I have never known a criminal to *confess* a crime of which he was innocent. The nearest thing to it in my experience is when one criminal, jointly guilty with another and sure of conviction, has drawn lots with his pal, lost, confessed, and in the confession exculpated his companion.

In the police organization of almost every large city there are a few men who are genuinely gifted for the work of detection. Such an one was Guiseppe Petrosino, a great detective, and an honest, unselfish, and heroic man, who united indefatigable patience and industry with reasoning powers of a high order. The most thrilling evening of my life was when I listened before a crackling fire in my library to Joe's story of the Van Cortlandt Park murder, the night before I was going to prosecute the case. Sitting stiffly in an arm-chair, his ugly moon-face expressionless save for an occasional flash from his black eyes, Petrosino recounted slowly and accurately how, by means of a single slip of paper bearing the penciled name "Sabbatto Gizzi, P. O. Box 239, Lambertville, N. J.," he had run down the unknown murderer of an unknown Italian stabbed to death in the park's shrubbery.

Petrosino's physical characteristics were so pronounced that he was probably as widely, if not more widely, known than any other Italian in New York. He was short and heavy, with enormous shoulders and a bull neck, on which was placed a great round head like a summer squash. His face was pock-marked, and he talked with a deliberation that was due to his desire for accuracy, but which at times might have been suspected to arise from some other cause. He rarely smiled and went methodically about his business, which was to drive the Italian criminals out of the city and country. Of course, being a marked man in more senses than one, it was practically impossible to disguise himself, and, accordingly, he had to rely upon his own investigations and detective powers, supplemented by the efforts of the trained men in the Italian branch, many of whom are detectives of a high order of ability. If the life of Petrosino were to be written, it would be a book unique in the history of criminology and crime, for this man was probably the only great detective of the world to find his career in a foreign country amid criminals of his own race.

I have instanced Petrosino as an example of a police detective of a very unusual type, but I have known several other men on the New York Police Force of real genius in their own particular lines of work. One of these is an Irishman who makes a specialty of get-rich-quick men, oil and mining stock operators, wire-tappers and their kin, and who knows the antecedents and history of most of them better than any other man in the country. He is ready to take the part of either a "sucker" or a fellow crook, as the exigencies of the case may demand.

There are detectives—real ones—on the police force of all the great cities of the world to-day, most of them specialists, a few of them geniuses capable of undertaking the ferreting out of any sort of mystery, but the last are rare. The police detective usually lacks the training, education, and social experience to make him effective in dealing with the class of élite criminals who make high society their field. Yet, of course, it is this class of crooks who most excite our interest and who fill the pages of popular detective fiction.

The headquarters man has no time nor inclination to follow the sporting duchess and the fictitious earl who accompanies her in their picturesque wanderings around the world. He is busy inside the confines of his own country. Parents or children may disappear, but the mere seeking of oblivion on their part is no crime and does not concern him except by special dispensation on the part of his superiors. Divorced couples may steal their own children back and forth, royalties may inadvertently involve themselves with undesirables, governmental information exude from State portals in a peculiar manner, business secrets pass into the hands of rivals, race-horses develop strange and untimely diseases, husbands take long and mysterious trips from home —a thousand exciting and worrying things may happen to the astonishment, distress, or intense interest of nations, governments, political parties, or private individuals, which from their very nature are outside the purview of the regular police. Here, then, is the field of the secret agent or private detective, and here, forsooth, is where the detective of genuine deductive powers and the polished address of the so-called "man of the world" is required.

There are two classes of cases where a private detective must needs be used, if indeed any professional assistance is to be called in: first, where the person whose identity is sought to be discovered or whose activities are sought to be terminated is not a criminal or has committed no crime, and second, where, though a crime has been committed, the injured parties cannot afford to undertake a public prosecution.

For example, if you are receiving anonymous letters, the writer of which accuses you of all sorts of unpleasant things, you would, of course, much prefer to find out who it is and stop him quietly than to turn over the correspondence to the police and let the writer's attorneys publicly cross-examine you at his trial as to your past career. Even if a diamond necklace is stolen from a family living on Fifth Avenue, there is more than an even chance that the owner will prefer to conceal her loss rather than to have her picture in the morning paper. Yet she will wish to find the necklace if she can.

When the matter has no criminal side at all, the police cannot be availed of, although we sometimes read that the officers of the local precinct have spent many hours in trying to locate Mrs. So-and-So's lost Pomeranian, or in performing other functions of an essentially private nature—most generously. But if, for example, your daughter is made the recipient, almost daily, of anonymous gifts of jewelry which arrive by mail, express, or messenger, and you are anxious to discover the identity of her admirer and return them, you will probably wish to engage outside assistance.

Where will you seek it? You can do one of two things: go to a big agency and secure the services of the right man, or engage such a man outside who may or may not be a professional detective. I have frequently utilized with success in peculiar and difficult cases the services of men whom I knew to be common-sense persons, with a natural taste for ferreting out mysteries, but who were not detectives at all. Your head bookkeeper may have real talents in this direction—if he is not above using them. Naturally, the first essential is brains—and if you can give the time to the matter, your own head will probably be the best one for your purposes. If, then, you are willing to undertake the job yourself, all you need is some person or persons to carry out your instructions, and such are by no means difficult to find. I have had many a case run down by my own office force—clerks, lawyers, and stenographers, all taking a turn at it. Why not? Is the professional sleuth working on a fixed salary for a regular agency and doing a dozen different jobs each month as likely to bring to bear upon your own private problem as much intelligence as you yourself?

There is no mystery about such work, except what the detective himself sees fit to enshroud it with. Most of us do detective work all the time without being conscious of it. Simply because the matter concerns the theft of a pearl, or the betraying of a business or professional secret, or the disappearance of a friend, the opinion of a stranger becomes no more valuable. And the chances are equal that the stranger will make a bungle of it.

Many of the best available detectives are men who work by themselves without any permanent staff, and who have their own regular clients, generally law firms and corporations. Almost any attorney knows several such, and the chief advantage of employing one of them lies in the fact that you can learn just what their abilities are by personal experience. They usually command a high rate of remuneration, but deductive ability and resourcefulness are so rare that they are at a premium and can only be secured by paying it. These men are able, if necessary, to assume the character of a doctor, traveller, man-about-town, or business agent without wearing in their lapels a sign that they are detectives, and they will reason ahead of the other fellow and can sometimes calculate pretty closely what he will do. Twenty-five dollars a day will generally hire the best of them, and they are well worth it.

The detective business swarms with men of doubtful honesty and morals, who are under a constant temptation to charge for services not rendered and expenses not incurred, who are accustomed to exaggeration if not to perjury, and who have neither the inclination nor the ability to do competent work.

Once they get their clutches on a wealthy client, they resemble the shyster lawyer in their efforts to bleed him by stimulating his fears of publicity and by holding out false hopes of success, and thus prolonging their period of service. An unscrupulous detective will, almost as a matter of course, work on two jobs at once and charge *all* his time to each client. He will constantly report progress when nothing has been accomplished, and his expenses will fill pages of his notebook. Meantime his daily reports will fall like a shower of autumn leaves. In no profession is it more essential to know the man who is working for you. If you need a detective, get the best you can find, put a limit on the expense, and give him your absolute confidence.

CHAPTER VI

Detectives Who Detect

IN the preceding chapter the writer discussed at some length the real, as distinguished from the fancied, attributes of detectives in general, and the weaknesses as well as the virtues of the so-called detective "agency." There are in the city of New York at the present time about one hundred and fifty licensed detectives. Under the detective license laws each of these has been required to file with the State comptroller written evidences of his competency, and integrity, approved by five reputable freeholders of his county, and to give bond in the sum of two thousand dollars. He also has to pay a license fee of one hundred dollars per annum, but this enables him to employ as many "operators" as he chooses. In other words, the head of the agency may be of good character and his agents wholly undesirable citizens. How often this is the case is known to none better than the heads themselves. The strength and efficiency of a detective agency does not lie in the name at the top of its letter-paper, but in the unknown personnel of the men who are doing or shirking the work. I believe that most of the principals of the many agencies throughout the United States are animated by a serious desire to give their clients a full return for their money and loyal and honest service. But the best intentions in the world cannot make up for the lack of untiring vigilance in supervising the men who are being employed in the client's service.

It is the right here that the "national" has an immense advantage over the small agency which cannot afford to keep a large staff of men constantly on hand, but is forced to engage them temporarily as they may be needed. The "national" agency can shift its employees from place to place as their services are required, and the advantages of centralization are felt as much in this sort of work as in any other industry. The licensed detective who sends out a hurry call for assistants is apt to be able to get only men whom he would otherwise not employ. In this chapter, the word "national," as applied to a detective agency, refers not to the title under which such an agency may do its business, but to the fact that it is organized and equipped to render services all over the country.

In this connection it is worth noticing that the best detective agencies train their own operators, selecting them from picked material. The candidate must as rule be between twenty and thirty-five years of age, sound of body, and reasonably intelligent. He gets pretty good wages from the start. From the comparatively easy work of watching or "locating," he is advanced through the more difficult varieties of "shadowing" and "trailing," until eventually he may develop into a first-class man who will be set to unravel a murder mystery or to "rope" a professional criminal. But with years of training the best material makes few *real* detectives, and the real detective remains in fact the man who sits at the mahogany desk in the central office and presses the row of mother of pearl buttons in front of him.

If you know the heads or superintendents of the large agencies you will find that the "star" cases, of which they like to talk, are, for the most part, the pursuit and capture of forgers and murderers. The former, as a rule, are "spotted" and "trailed" to their haunts, and when sufficient evidence has been obtained the police are notified, and a raid takes place, or the arrest is made, by the State authorities. In the case of a murderer, in a majority of cases, his capture is the result of skilful "roping" by an astute detective who manages to get into his confidence. For example, a murder is committed by an Italian miner. Let us suppose he has killed his "boss," or even the superintendent or owner. He disappears. As the reader known, the Italians are so secretive that it is next to impossible to secure any information —even from the relatives of the murdered man. The first thing is to locate the assassin. An Italian detective is sent into the mine as a laborer. Months may elapse before he gets on familiar or intimate terms with his fellows. All the time he is listening and watching. Presently he hears something that indicates that the murderer is communicating with one of his old friends either directly or through third parties. It is then generally only a question of time before his whereabouts are ascertained. Once he is "located" the the same method is followed in securing additional evidence or material in the nature of a confession or admission tending to establish guilt. Having previously "roped" the murderer's friends, the detective now proceeds to the more difficult task of "roping" the murderer himself. Of course, the life of a detective in a Pennsylvania coal mine would be valueless if his identity were discovered, and yet the most daring pieces of detective work are constantly being performed under these and similar conditions. Where the criminal is not known, the task becomes far more difficult and at times exceedingly dangerous.

One of my own friends, an Italian gentleman, spent several months in the different mines of this country, where Italians are largely employed, investigating conditions and ascertaining for the benefit of his government the extent to which anarchy was prevalent. It was necessary for him to secure work as a miner at the lowest wages and to disguise himself in such a way that it would be impossible for anybody to detect his true character. Fortunately, the great diversity of Italian dialects facilitated his efforts and enabled him to pass himself off as from another part of the country than his comrades. Having made his preparations he came to New York as an immigrant and joined a party of newly arrived Italians on their way to the coal mines of West Virginia. Without following him further, it is enough to say that during his service in the mines he overheard much that was calculated to interest exceedingly the authorities at Rome. Had his disguise been penetrated the quick thrust of a five-inch blade would have ended his career. He would never have returned to New York. There would only have been another dead "Dago" miner. The local coroner would have driven up in his buggy, looked at the body, examined the clean, deep wound in the abdomen, shrugged his shoulders, and empanelled a hetrogeneous jury who would have returned a verdict to the effect that "deceased came to his death through a stab wound inflicted by some person to the jury unknown." My friend was not a professional detective, but the recital of his experiences was enough to fill me with new respect for those engaged in the "man hunt" business among the half civilized miners of the coal regions.

But the work of even the "national" agencies is not of the kind which the novel-reading public generally associates with detectives—that is to say, it rarely deals with the unravelling of "mysteries," except the identity of passers of fraudulent paper and occasional murderers. The protection of the banks is naturally the most important work that such an agency can perform.

The National Bankers' Association has eleven thousand members. "Pinkerton's Bank and Bankers' Protection" also has a large organization of subscribers. These devote themselves to identifying and running down all criminals whose activities are dangerous to them. Here the agency and the police work hand in hand, exchanging photographs of crooks and suspects and keeping closely informed as to each other's doings. Yet there is no official connection between any detective agency and the police of any city. It is an almost universal rule that a private detective shall not make an arrest. The reasons for this are manifold. In the first place, the private detective has neither the general authority nor the facilities for the manual detention of a criminal. A blue coat and brass buttons, to say nothing of a night stick, are often invaluable stage properties in the last act of the melodrama. And as the criminal authorities are eventually to deal with the defendant anyway, it is just as well if they come into the case as soon as may be. It goes without saying, of course, that a detective *per se* has no more right to make an arrest than any private citizen—nor has a policeman, for that matter, save in exceptional cases. The officer is valuable for his dignity, avoirdupois, "bracelets," and other accessories. The police thus get the credit of many arrests in difficult cases where all the work has been done by private detectives, and it is good business for the latter to let them know it.

One of the chief assets of the big agency is its accumulated information concerning all sorts of professional criminals. Its galleries are quite as complete as those of the local police head-quarters, for a constant exchange of art objects is going on with the police throughout the world. And as the agency is protecting banks all over the United States it has greater interest in *all* bank burglars as a class than the police of any particular city who are only concerned with the burglars who (as one might say) burgle in their particular burg. Thus, you are more likely to find a detective from a national agency than a sleuth from 300 Mulberry Street, New York, following a forger to Australasia or Polynesia.

The best agencies absolutely decline to touch divorce and matrimonial cases of any sort. It does not do a detective agency any good to have its men constantly upon the witness stand subject to attack, with a consequent possible reflection upon their probity of character or truthfulness. Moreover, a good detective is too valuable a person to be wasting his time in the court-room. In the ordinary divorce case the detective, having procured evidence, is obliged to remain on tap and subject to call as a witness for at least three or four months, during which time he cannot be sent away on distant work. Neither can the customer be charged ordinarily for waiting time, and apart from its malodorous character the business is not desirable from a financial point of view.

The national agencies prefer clean criminal work, murder cases, and general investigating. They no longer undertake any policing, strikbreaking, or guarding. The most ridiculous misinformation in regard to their participation in this sort of work has been spread broadcast largely by jealous enemies and by the labor unions.

By way of illustration, one Thomas Beet, describing himself as an English detective, contributed an article to the New York *Tribune* of September 16, 1906, in which he said:

"In one of the greatest of our strikes, that involving the steel industry, over two thousand armed detectives were employed supposedly to protect property, while several hundred men were scattered in the ranks of strikers as workmen. Many of the latter became officers in the labor bodies, helped to make laws for the organizations, made incendiary speeches, cast their votes for the most radical movements made by the strikers, participated in and led bodies of the members in the acts of lawlessness that eventually caused the sending of State troops and the declaration of martial law. While doing this, these spies within the ranks were making daily reports of the plans and purposes of the strikers. To my knowledge, when lawlessness was at its height and murder ran riot, these men wore little patches of white on the lapels of their coats so that their fellow detectives of the two thousand would not shoot them down by mistake."

He, of course, referred to the great strike at Homestead, Pennsylvania, in 1892. In point of fact, there were only six private detectives engaged on the side of the employers at that time, and these were there to assist the local authorities in taking charge of six hundred and fifty watchmen, and to help place the latter upon the property of the steel company. These watchmen were under the direction of the sheriff and sworn in as peace officers of the county. Mr. Beet seems to have confused his history and mixed up the white handkerchief of the Huguenots of Nantes with the strike-breakers of Pennsylvania. It is needless to repeat (as Mr. Robert A. Pinkerton stated at the time), that the white label story is ridiculously untrue, and that it was the strikers who attacked the watchmen, and not the watchmen the strikers. One striker and one watchman were killed.

But this attack of Mr. Beet upon his own profession, under the guise of being an English detective (it developed that he was an ex-divorce detective from New York City), was not confined to his remarks about inciting wanton murder. On the contrary, he alleged (as one having authority and not merely as a scribe) that American detective agencies were practically nothing but blackmailing concerns, which used the information secured in a professional capacity to extort money from their own clients.

"Think of the so-called detective," says Mr. Beet, "whose agency pays him two dollars or two dollars and fifty cents a day, being engaged upon confidential work and in the possession of secrets that he knows are worth money! Is it any wonder that so many cases are sold out by employees, even when the agencies are honest?"

We are constrained to answer that it is no more wonderful than that any person earning the same sum should remain honest when he might so easily turn thief. As the writer has himself pointed out in these pages, there are hundreds of so-called detective agencies which are but traps for the guileless citizen who calls upon them for aid. But there are many which are as honestly conducted as any other variety of legitimate business. I do not know Mr. Beet's personal experience, but it appears to have been unfortunate. At any rate, his diatribe is unfounded and false, and the worst feature of it is his assertion that detective agencies make a business of manufacturing cases when there happen to be none on hand.

"Soon," says he, "there were not enough cases to go around, and then with the aid of spies and informers the unscrupulous detectives began to make cases. Agencies began to work up evidence against persons and then resorted to blackmail, or else approached those to whom the information might be valuable, and by careful manœuvering had themselves retained to unravel the case. This brought into existence hordes of professional informers who secured the opening wedges for the fake agencies. Men and women, many of them of some social standing, made it a practice to pry around for secrets which might be valuable; spies kept up their work in large business establishments and began to haunt the cafés and resorts of doubtful reputation, on the watch for persons of wealth and prominence who might be foolish enough to place themselves in compromising circumstances. Even the servants in wealthy families soon learned that certain secrets of the master and mistress could be turned to profitable account. We shudder when we hear of the system of espionage maintained in Russia, while in the large American cities, unnoticed, are organizations of spies and informers on every hand who spend their lives digging pitfalls for the unwary who can afford to pay."

One would think that we were living in the days of the Borgias! "Ninety per cent," says Mr. Beet, "of private detective agencies are rotten to the core and simply exist and thrive upon a foundation of dishonesty, deceit, conspiracy, and treachery to the public in general and their own patrons in particular. There are detectives at the heads of prominent agencies in this country whose pictures adorn the Rogues' Gallery; men who have served time in various prisons for almost every crime on the calendar."

This harrowing picture has the modicum of truth that makes it insidiously dangerous. But this last extravagance betrays the denunciator. One would be interested to have this past-master of overstatement mention the names of these distinguished crooks that head the prominent agencies. Their exposure, if true, would not be libellous, and it would seem that he had performed but half his duty to the public in refraining from giving this important, if not vital, information.

I know several of these gentlemen whose pictures I feel confident do not appear in the Rogues' Gallery, and who have not been, as yet, convicted of crime. A client is as safe in the hands of a good detective agency as he is in the hands of a good attorney; he should know his agency, that is all—just as he should know his lawyer. The men at the head of the big agencies generally take the same pride in their work as the members of any other profession. They know that a first-class reputation for honesty is essential to their financial success and that good will is their stock in trade. Take this away and they would have nothing.

In 1878 the founder of one of the most famous of our national agencies promulgated in printed form for the benefit of his employees what he called his general principles. One of these was the following:

"This agency only offers its services at a stated per diem for each detective employed on an operation, giving no guarantee of success, except in the reputation for reliability and efficiency; and any person in its service who shall, under any circumstances, permit himself or herself to receive a gift, reward, or bribe shall be instantly dismissed from the service."

Another:

"The profession of the detective is a high and honorable calling. Few professions excel it. He is an officer of justice, and must himself be pure and above reproach."

Again:

"It is an evidence of the unfitness of the detective for his profession when he is compelled to resort to the use of intoxicating liquors; and, indeed, the strongest kind of evidence, if he continually resorts to this evil practice. The detective must not do anything to farther sink the criminal in vice or debauchery, but, on the contrary, must seek to win his confidence by endeavoring to elevate him, etc."

"Kindness and justice should go hand in hand, whenever it is possible, in the dealings of the detective with the criminal. There is no human being so degraded but there is some little bright spark of conscience and of right still existing in him."

Last:

"The detective must, in every instance, report everything which is favorable to the suspected party, as well as everything which may be against him."

The man who penned these principles had had the safety of Abraham Lincoln in his keeping; and these simple statements are the best refutation of the baseless assertions above referred to.

It may be that in those days the detection of crime was a bit more elementary than at the present time. One can hardly picture a modern sleuth delaying long in an attempt to evangelize his quarry, but these general principles are the right stuff and shine like good deeds in a naughty world.

As one peruses this little pink pamphlet he is constantly struck by the repeated references to the detective as an actor. That was undoubtedly the ancient concept of a sleuth. "He must possess, also, the player's faculty of assuming any character that his case may require, and of acting it out to the life with an ease and naturalness which shall not be questioned." This somewhat large order is, to our relief, qualified a little later on. "It is not to be expected, however," the author admits, "that every detective shall possess these rare qualifications, although the more talented and versatile he is, the higher will be the sphere of operation which he will command."

The modern detective agency is conducted on business principles and does not look for histrionic talent or general versatility. As one of the heads of a prominent agency said to me the other day:

"When we want a detective to take the part of a plumber we get a plumber, and when we need one to act as a boiler-maker we go out and get a real one—if we haven't one on our pay rolls."

"But," I replied, "when you need a man to go into a private family and pretend to be an English clergyman, or a French viscount, or a brilliant man of the world—who do you send?"

The "head" smiled.

"The case hasn't arisen yet," said he. "When it does I guess we'll get the real thing."

The national detective agency, with its thousands of employees who have, most of them, grown up and received their training in its service, is a powerful organization, highly centralized, and having an immense sinking fund of special knowledge and past experience. This is the product of decades of patient labor and minute record. The agency which offers you the services of a Sherlock Holmes is a fraud, but you can accept as genuine a proposition to run down any man whose picture you may be able to identify in the gallery. The day of the impersonator is over. The detective of this generation is a hard-headed business man with a stout pair of legs.

This accumulated fund of information is the heritage of an honest and long established industry. It is seventy-five per cent of its capital. It is entirely beyond the reach of the mushroom agency, which in consequence has to accept less desirable retainers involving no such requirements, or go to the wall. The collection of photographs is almost priceless and the clippings, letters, and memoranda in the filing cases only secondarily so. Very few of the "operators" pretend to anything but common-sense, with perhaps some special knowledge of the men they are after. They are not clairvoyants or mystery men, but they will tirelessly follow a crook until they get him. They are the regular troops who take their orders without question. The real "detective" is the "boss" who directs them.

The reader can easily see that in all cases where a crime, such as forgery, is concerned, once the identity of the criminal is ascertained, half the work (or more than half) is done. The agencies know the face and record of practically every man who ever flew a bit of bad paper in the United States, in England, or on the Continent. If an old hand gets out of prison his movements are watched until it is obvious that he does not intend to resort to his old tricks. After the criminal is known or "located," the "trailing" begins and his "connections" are carefully studied. This may or may not require what might be called *real* detective work; that is to say, work requiring superior power of deducing conclusions from first-hand information, coupled with unusual skill in acting upon them. Mere trailing is often simple, yet sometimes very difficult. A great deal depends on the operator's own peculiar information as to his man's habits, haunts, and associates. It is very hard to say in most cases just where mere knowledge ends and detective work proper begins. As for disguises, they are almost unknown, except such as are necessary to enable an operator to join a gang where his quarry may be working and "rope" him into a confession.

Detective agencies of the first-class are engaged principally in clean-cut criminal work, such as guarding banks from forgers and "yeggmen"—an original and dangerous variety of burglar peculiar to the United States and Canada. In other words, they have large associations of clients who need more protection than the regular police can give them, and whose interest it is that the criminal shall not only be driven out of town, but run down (wherever he may be), captured, and put out of the way for as long a time as possible.

The work done for private individuals is no less important and effective, but it is secondary to the other. The great value of the "agency" to the victim of a theft is the speed with which it can disseminate its information—something quite impossible so far as the individual citizen is concerned. Let me give an illustration or two.

Between 10.30 P. M. Saturday, February 25, 1911, and 9.30 A. M. Sunday, February 26, 1911, one hundred and thirty thousand dollars worth of pearls belonging to Mrs. Maldwin Drummond were stolen from a stateroom on the steamship *Amerika* of the Hamburg-American line. The London underwriters cabled five thousand dollars reward and retained to investigate the case a well-known American agency, which before the *Amerika* had reached Plymouth on her return trip had their notifications in the hands of all the jewelers and police officials of Europe and the United States, and had covered every avenue of disposal in North and South America. In addition, this agency investigated every human being on the *Amerika* from first cabin to forecastle.

Within a year or so an aged stock-broker, named Bancroft, was robbed on the street of one hundred thousand dollars in securities. Inside of fifty-five minutes after he had reported his loss a detective agency had notified all banks, brokers, and the police in fifty-six cities of the United States and Canada.

In the story books your detective scans with eagle eye the surface of the floor for microscopic evidences of crime. His mind leaps from a cigar ash to a piece of banana peel and thence to what the family had for dinner. His brain is working all the time. It is, of course, all quite wonderful and most excellent reading, and the old-style sleuth really thought he could do it! Nowadays, while the fake detective is snooping around the back piazza with a telescope, the real one is getting the "dope" from the village blacksmith or barber or the waitress at the station. He may not be highly intelligent, but he knows the country, and, what is more important, he knows the people. All the brains in the world cannot make up for the lack of an elementary knowledge of the place and the characters themselves. It stands to reason that no strange detective could form as good an opinion as to which of the members of your household would be most likely to steal a piece of jewelry as you could yourself. Yet the old-fashioned Sherlock knew and knows it all.

One of the best illustrations of the practical necessity of some first-hand knowledge is that afforded by the recovery of a diamond necklace belonging to the wife of a gentleman in a Connecticut town. The facts that are given here are absolutely accurate. The gentleman in question was a retired business man of some means who lived not far from the town and who made frequent visits to New York City. He had made his wife a present of a fifteen thousand-dollar diamond necklace, which she kept in a box in a locked trunk in her bedroom. While she had owned the necklace for over a year she had never worn it. One evening having guests for dinner on the occasion of her wedding anniversary she decided to put it on and wear it for the first time. That night she replaced it in its box and enclosed this in another box, which she locked and placed in her bureau drawer. This she also locked. The following night she decided to replace the necklace in the trunk. She accordingly unlocked the bureau drawer, and also the larger box, which apparently was in exactly the same condition as when she had put it away. But the inner box was empty and the necklace had absolutely disappeared. Now, no one had seen the necklace for a year, and then only her husband, their servants, and two or three old friends. No outsider could have known of its existence. There was no evidence of the house or bureau having been disturbed.

A New York detective agency was at once retained, which sent one of its best men to the scene of the crime. He examined the servants, heard the story, and reported that it must have been an inside job—that there was no possibility of anything else. But there was nothing to implicate any one of the servants, and there seemed no hope of getting the necklace back. Two or three days later the husband turned up at the agency's office in New York, and after beating about the bush for a while, remarked:

"I want to tell you something. You have got this job wrong. There's one fact your man didn't understand. The truth is that I'm a pretty easy going sort, and every six months or so I take all the men and girls employed around my house down to Coney Island and give 'em a rip-roaring time. I make 'em my friends, and I dance with the girls and I jolly up the men, and we are all good pals together. Sort of unconventional, maybe, but it pays. I know—see?—that there isn't a single one of those people who would do me a mean trick. Not one of 'em but would lend me all the money he had. I don't care what your operator says, the person who took that necklace came from outside. You take that from me."

The superintendent, who is wise in his generation, scratched his chin.

"Is that dead on the level?" he inquired.

"Gospel!" answered the other.

"I'll come up myself!" said the boss.

Next day the boss behind a broken-winded horse, in a dilapidated buggy, drove from another town to the place where his client lived. At the smithy on the cross-roads he stopped and borrowed a match.

"Anybody have good hosses in this town?" asked the detective.

"Sure!" answered the smith. "Mr. —— up on the hill has the best in the county!"

"What sort of a feller is he?"

The smith chewed in silence for a moment.

"Don't know him myself, but I tell you what, his help says he's the best employer they ever had—and they *stay* there forever!"

The boss drove on to the house, which he observed was situated at about an equal distance from three different railway stations and surrounded by a piazza with pillars. He walked around it, examining the vines until his eye caught a torn creeper and a white scratch on the paint. It had been an outside job after all, and two weeks had already been lost. Deduction was responsible for a mistake which would not have occurred had a little knowledge been acquired first. That is the lesson of this story.

The dénouement, which has no lesson at all, is interesting. The superintendent saw no prospect of getting back the necklace, but before so informing the client, decided to cogitate on the matter for a day or two. During that time he met by accident a friend who made a hobby of studying yeggmen and criminals and occasionally doing a bit of the amateur tramp act himself.

"By the way," said the friend, "do you ever hear of any 'touches' up the river or along the Sound?"

"Sometimes," answered the boss, pricking up his ears. "Why do you ask?"

"Why, the other night, replied the friend, "I happened to be meeting my wife up at the Grand Central about six o'clock and I saw two yeggs that I knew taking a train *out*. I thought it was sort of funny. Pittsburgh Ike and Denver Red."

"When was it?"

"Two weeks ago," said the friend.

"Thanks," returned the boss. "You must excuse me now; I've got an important engagement."

Three hours later Pittsburgh Ike and Denver Red were in a cell at headquarters. At six o'clock that evening the necklace had been returned. This was a coincidence that might not occur in a hundred years, but had the deductive detective determined the question he would still be pondering on the comparative probability of whether the cook, the chore man, or the hired girl was the guilty party.

A clean bit of detection on the part of an agency, and quite in the day's work, was the comparatively recent capture of a thief who secured three hundred and sixty thousand dollars worth of securities from a famous banking institution in New York City by means of a very simple device. A firm of stock brokers had borrowed from this bank about two hundred and fifty thousand dollars for a day or two and put up the securities as collateral. In the ordinary course of business, when the borrower has no further use for the money, he sends up a certified check for the amount of the loan with interest, and the bank turns over the securities to the messenger. In this particular case a messenger arrived with a certified check, shoved it into the cage, and took away what was pushed out to him in return—three hundred and sixty thousand dollars in bonds. The certification turned out to be a forgery and the securities vanished. I do not know whether the police were consulted or not. Sometimes in such cases the banks prefer to resort to more private methods and, perhaps, save the necessity of making a public admission of their stupidity. When my friend, the superintendent, was called in, the officers of the bank were making the wildest sort of guesses as to the identity of the master mind and hand which had deceived the cashier. He must, they felt sure, have made the forgery with a camel's hair brush of unrivalled fineness.

"A great artist!" said the president.

"The most skilful forger in the world!" opined another.

"We must run down all the celebrated criminals!" announced a third.

"Great artist—nothing!" remarked the boss, rubbing his thumb over the certification which blurred at the touch. "He's no painter! Why, that's a rubber stamp!"

What a shock for those dignified gentlemen! To think that *their* cashier had been deceived by a mere, plebeian, common or garden thing of rubber!

"Good-day, gents!" said the boss, putting the check in his wallet. "I've got to get busy with the rubber stamp makers!"

He returned to his office and detailed a dozen men to work on the East Side and a dozen on the West Side, with orders to search out every man in New York who manufactured rubber stamps. Before the end of the afternoon the maker was found on the Bowery, near Houston Street. This was his story: A couple of weeks before, a young man had come in and ordered a certification stamp, drawing at the time a rough design of what he wanted. The stamp, when first manufactured, had not been satisfactory to him; and on his second visit, the customer had left a piece of a check, carefuly torn out in circular form, which showed the certification which he desired copied. This fragment the maker had retained, as well as a slip of paper, upon which the customer had written the address of the place to which he wished the stamp sent—The Young Men's Christian Association! The face of the fragment showed a part of the maker's signature. The superintendent ran his eye over a list of brokers and picked out the name of the firm most like the hieroglyphics on the check. Then he telephoned over and asked to be permitted to see their pay roll. Carefully comparing the signature appearing thereon with the Y. M. C. A. slip, he picked his man in less than ten minutes.

The latter was carefully trailed to his home, and thence to the Young Men's Christian Association, after which he called on his fiancée at her father's house. He spent the night at his own boarding place. Next morning (Sunday) he was arrested on his way to church, and all the securities (except some that he later returned) were discovered in his room. More quick work! The amateur's method had been very simple. He knew that the loan had been made and the bonds sent to the bank. So he forged a check, certified it himself, and collected the securities. Of course, he was a bungler and took a hundred rash chances.

A good example of the value of the accumulated information—documentary, pictorial, and otherwise—in the possession of an agency was the capture of Charles Wells, more generally known as Charles Fisher, *alias* Henry Conrad, an old-time forger, who suddenly resumed his activities after being released from a six-year term in England. A New York City bank had paid on a bogus two hundred and fifty dollar check and had reported its loss to the agency in question. The superintendent examined the check (although Fisher had been in confinement for six years on the other side) spotted it as his work. The next step was to find the forger. Of course, no man who does the actual "scratching" attempts to "lay down" the paper. That task is up to the "presenter." The cashier of the bank identified in the agency's gallery the picture of the man who had brought in the two hundred and fifty dollar check, and he in turn proved to be another ex-convict well known in the business, whose whereabouts in New York were not difficult to ascertain. He was "located" and "trailed" and all his associates noted and followed. In due course he "connected up" (as they say) with Fisher. Now, it is one thing to follow a man who has no idea that he is being followed and another to trail a man who is as suspicious and elusive as a fox. A professional criminal's daily business is to observe whether or not he is being followed, and he rarely if ever, makes a direct move. If he wants a drink at the saloon across the street, he will, by preference, go out the back door, walk around the block and dodge in the side entrance under the tail of an ice wagon. In this case the detectives followed the presenter for days before they reached Fisher, and when they did they had still to locate his "plant."

The arrest in this case illustrates forcibly the chief characteristic of successful criminals—egotism. The essential quality of daring required in their pursuits gives them an extraordinary degree of self-confidence, boldness, and vanity. And to vanity most of them can trace their fall. It seems incredible that Fisher should have returned to the United States after his discharge from prison and immediately resumed his operations without carefully concealing his impedimenta. Yet when he was run down in a twenty-six family apartment house, the detectives found in his valise several thousand blank and model checks, hundreds of letters and private papers, a work on "Modern Bank Methods," and his "ticket of leave" from England! This man was a successful forger and because he was successful, his pride in himself was so great that he attributed his conviction in England to accident and really felt that he was immune on his release.

The arrest of such a man often presents great legal difficulties which the detectives overcome by various practical methods. Of course, no officer without a search warrant has a right to enter a house or an apartment. A man's house is his castle. Mayor Gaynor, when a judge, in a famous opinion (more familiarly known in the lower world even than the Decalogue) laid down the law unequivocally and emphatically in this regard. Thus, in the Fisher case, the defendant having been arrested on the street, the detectives desired to search the apartment of the family with which he lived. They did this by first inducing the tenant to open the door and, after satisfying themselves that they were in the right place, ordering the occupants to get in line and "march" from one room to another while they rummaged for evidence. "Of course, we had no right to do it, but they didn't know we hadn't!" said the boss.

But frequently the defendant knows his rights just as well as the police. On one occasion the same detective who arrested Fisher wanted to take another man out of an apartment where he had been run to earth. His mother (aged eighty-two years) put the chain on the door and politely declined to open it. All the evidence against the forger was inside the apartment and he was actively engaged in burning it up in the kitchen stove. In half an hour to arrest him would have been useless! The detectives stormed and threatened, but the old crone merely grinned at them. She hated a "bull" as much as did her son. Fearing to take the law into their own hands, they summoned a detective sergeant from head-quarters, but, although he sympathized with them, he had read Mayor Gaynor's decision and declined to take any chances. They then "appealed" to the cop on the beat, who proved more reasonable, but although he used all his force, he was unable to break down the door which had in the meantime been reinforced from the inside. After about an hour, the old lady unchained the door and invited the detectives to come in. The crook was sitting by the window smoking a cigar and reading

St. Nicholas, while all evidence of his crime had vanished in smoke.

One more anecdote, at the expense of the deductive detective. A watchman was murdered, the safe of a brewery blown open and the contents stolen. Local detectives worked on the case and satisfied themselves that the night engineer at the brewery had committed the crime. He was a quiet and, apparently, a God-fearing man, but circumstances were conclusive against him. In fact, he had been traced within ten minutes of the murder on the way to the scene of the homicide. But some little link was lacking and the brewery officials called in the agency. The first thing the superintendent did was to look over the engineer. At first sight he recognized him as a famous crook who had served five years for a homicidal assault! One would think that that would have settled the matter. But it didn't! The detective said nothing to his associates or employers, but called on the engineer that evening and had a quiet talk with him in which he satisfied himself that the man *was* entirely innocent. The man had served his time, turned over a new leaf, and was leading an honest, decent life. Two months later the superintendent caused the arrest of four yeggmen, all of whom were convicted and are now serving fifteen years each for the crime.

Thus, the reader will observe that there are just a few more real detectives still left in the business—if you can find them. Incidentally, they, one and all, take off their hats to Scotland Yard. They will tell you that the Englishman may be slow (fancy an American inspector of police wearing gray suede gloves and brewing himself a dish of tea in his office at four o'clock), but that once he goes after a crook he is bound to get him—it is merely a question of time. I may add that in the opinion of the heads of the big agencies the percentage of ability in the New York Detective Bureau is high—one of them going so far as to claim that fifty per cent of the men have real detective ability—that is to say "brains." That is rather a higher average than one finds among clergymen and lawyers, yet it may be so.

CHAPTER VII

Women in the Courts

AS WITNESSES

WOMEN appear in the criminal courts constantly as witnesses, although less frequently as complainants and defendants. As complainants are always witnesses, and as defendants may, and in point of fact generally do become so, whatever generalizations are possible regarding women in courts of law can most easily be drawn from their characteristics as givers of testimony. Roughly speaking, women exhibit about the same idiosyncrasies and limitations in the witness-chair as the opposite sex, and at first thought one would be apt to say that it would be fruitless and absurd to attempt to predicate any general principles in regard to their testimony, but a careful study of female witnesses as a whole will result in the inevitable conclusion that their evidence has virtues and limitations peculiar to itself.

The ancient theory that woman was man's inferior showed itself in the tendency to reject, or at least to regard with suspicion, her evidence in legal matters.

"The following law," says W. M. Best, "is attributed to Moses by Josephus: 'Let the testimony of women not be received on account of the *levity* and *audacity* of their sex'; a law which looks apocryphal, but which, even if genuine, could not have been of universal application. . . . The law of ancient Rome, though admitting their testimony in general, refused it in certain cases. The civil canon laws of mediæval Europe seem to have carried the exclusion much further. Mascardus says: *'Feminis plerumque omnino non creditur, et id dumtaxat, quod sunt feminæ quæ ut plurimum solent esse fraudulentæ fallaces, et dolosæ'* [Generally speaking, no credence at all is given to women, and for this reason, because they *are* women, who are usually deceitful, untruthful, and treacherous in the very highest degree]. And Lancelottus, in his 'Institutiones Juris Canonici,' lays it down in the most distinct terms, that women cannot in general be witnesses, citing the language of Virgil: *'Varium et mutabile semper femina'*. . . .

"Bruneau, although a contemporary of Madame de Sévigné, did not scruple to write, in 1686, that the deposition of three women was only equal to that of two men. At Berne, so late as 1821, in the Canton of Vaud, so late as 1824, the testimony of two women was required to counterbalance that of one man. . . . A virgin was entitled to greater credit than a widow. . . . In the 'Canonical Institutions of Devotus,' published at Paris in 1852, it is distinctly stated that, except in a few peculiar instances, women are not competent witnesses in criminal cases. In Scotland also, until the beginning of the eighteenth century, sex was a cause of exclusion from the witness-box in the great majority of instances."

Cockburn in his Memoirs tells of an incident during the trial of Glengarry, in Scotland, for murder in a duel, which is, perhaps, explicable by this extraordinary attitude:—A lady of great beauty was called as a witness and came into court heavily veiled. Before administering the oath, Lord Eskgrove, the judge (to whom this function belongs in Scotland), gave her this exposition of her duty:

"Young woman, you will now consider yourself as in the presence of Almighty God and of this High Court. *Lift up your veil, throw off all your modesty, and look me in the face.*"

Whatever difference does exist in character between the testimony of men and women has its root in the generally recognized diversity in the mental processes of the two sexes. Men, it is commonly declared, rely upon their powers of reason; women upon their intuition. Not that the former is frequently any more accurate than the latter. But our courts of law (at least those in English-speaking countries) are devised and organized, perhaps unfortunately, on the principle that testimony not apparently deduced by the syllogistic method from the observation of relevant fact is valueless, and hence woman at the very outset is placed at a disadvantage and her usefulness as a probative force sadly crippled.

The good old lady who takes the witness-chair and swears that she *knows* the prisoner took her purse has perhaps quite as good a basis for her opinion and her testimony (even though she cannot give a single reason for her belief and becomes hopelessly confused on cross-examination) as the man who reaches the same conclusion ostensibly by virtue of having seen the defendant near by, observed his hand reaching for the purse, and then perceived him take to his heels. She has never been taught to reason and has really never found it necessary, having wandered through life by inference or, more frankly, by guesswork, until she is no longer able to point out the simplest stages of her most ordinary mental processes.

As the reader is already aware, the value of all honestly given testimony depends first upon the witness's original capacity to observe the facts; second upon his ability to remember what he has seen and not to confuse knowledge with imagination, belief or custom, and lastly, upon his power to express what he has, in fact, seen and remembers.

Women do not differ from men in their original capacity to observe, which is a quality developed by the training and environment of the individual. It is in the second class of the witness's limitations that women as a whole are more likely to trip than men, for they are prone to swear to circumstances as facts, of *their own knowledge,* simply because they confuse what they have really observed with what they believe did occur or should have occurred, or with what they are convinced did happen simply because it was accustomed to happen in the past.

Perhaps the best illustration of the female habit of swearing that facts occurred because they *usually* occurred, was exhibited in the Twitchell murder trial in Philadelphia, cited in Wellman's "Art of Cross-Examination." The defendant had killed his wife with a blackjack, and having dragged her body into the back yard, carefully unbolted the gate leading to the adjacent alley and, retiring to the house, went to bed. His purpose was to create the impression that she had been murdered by some one from outside the premises. To carry out the suggestion, he bent a poker and left it lying near the body smeared with blood. In the morning the servant girl found her mistress and ran shrieking into the street.

At the trial she swore positively that she was first obliged to *unbolt the door* in order to get out. Nothing could shake her testimony, and she thus unconsciously negatived the entire value of the defendant's adroit precautions. He was justly convicted, although upon absolutely erroneous testimony.

The old English lawyers occasionally rejected the evidence of women on the ground that they are "frail." But the exclusion of women as witnesses in the old days was not for psychological reasons, nor did it originate from a critical study of the probative value of their testimony.

Though the conclusions to which women frequently jump may usually be shown by careful interrogation to be founded upon observation of actual fact, their habit of stating inferences often leads them to claim knowledge of the impossible —"wiser in [their] own conceit than seven men that can render a reason."

In a very recent case where a clever thief had been convicted of looting various apartments in New York City of over eighty thousand dollars' worth of jewelry, the female owners were summoned to identify their property. The writer believes that in every instance these ladies were absolutely ingenuous and intended to tell the absolute truth. Each and every one positively identified various of the loose stones found in the possession of the prisoner as her own. This was the case even when the diamonds, emeralds and pearls had no distinguishing marks at all. It was a human impossibility actually to identify any such objects, and yet these eminently respectable and intelligent gentlewomen swore positively that they could recognize their jewels. They drew the inference merely that as the prisoner had stolen similar jewels from them these must be the actual ones which they had lost, an inference very likely correct, but valueless in a tribunal of justice.

Where their inferences are questioned, women, as a rule, are much more ready to "swear their testimony through" than men. They are so accustomed to act upon inference that, finding themselves unable to substantiate their assertion by any sufficient reason, they become irritated, "show fight," and seek refuge in prevarication. Had they not, during their entire lives, been accustomed to mental short-cuts, they would be spared the humiliation of seeing their evidence "stricken from the record."

One of the ladies referred to testified as follows:

"Can you identify that diamond?"

"I am quite sure that it is mine."

"How do you know?"

"It looks exactly like it."

"But may it not be a similar one and not your own?"

"No; it is mine."

"But how? It has no marks."

I don't care. I know it is mine. I SWEAR IT IS!"

The good lady supposed that, unless she swore to the fact, she might lose her jewel, which was, of course, not the case at all, as the sworn testimony founded upon nothing but inference left her in no better position than she was in before.

The writer regrets to say that observation would lead him to believe that women as a rule have somewhat less regard for the spirit of their oaths than men, and that they are more ready, if it be necessary, to commit perjury. This may arise from the fact that women are fully aware that their sex protects them from the same severity of cross-examination to which men would be subjected under similar circumstances. It is to-day fatal to a lawyer's case if he be not invariably gentle and courteous with a female witness, and this is true even if she be a veritable Sapphira.

In spite of these limitations, which, of course, affect the testimony of almost every person, irrespective of sex, women, with the possible exception of children, make the most remarkable witnesses to be found in the courts. They are almost invariably quick and positive in their answers, keenly alive to the dramatic possibilities of the situation, and with an unerring instinct for a trap or compromising admission.

A woman will inevitably couple with a categorical answer to a question, if in truth she can be induced to give one at all, a statement of damaging character to her opponent. For example:

"Do you know the defendant?"

"Yes,—to my cost!"

Or:

"How old are you?"

"Twenty-three,—old enough to have known better than to trust him."

Forced to make an admission which would seem to hurt her position, the explanation, instead of being left for the re-direct examination of her own counsel, is instantly added to her answer then and there.

"Do you admit that you were on Forty-second Street at midnight?"

"Yes. *But it was in response to a message sent by the defendant through his cousin.*"

What is commonly known as "silent cross-examination" is generally the most effective. The jury realize the difficulties of the situation for the lawyer, and are not unlikely to sympathize with him, unless he makes bold to attack the witness, when they quickly change their attitude.

One question, and that as to the witness's means of livelihood, is often sufficient.

"How do you support yourself?"

"I am a lady of leisure!" replies the witness (arrayed in flamboyant colors) snappishly.

"That will do, thank you," remarks the lawyer with a smile. "You may step down."

The writer remembers being nicely hoisted by his own petard on a similar occasion:

"What do you do for a living?" he asked.

The witness, a rather deceptively arrayed woman, turned upon him with a glance of contempt:

"I am a respectable married woman, with seven children," she retorted. *"I do nothing for a living except* cook, wash, scrub, make beds, clean windows, mend my children's clothes, mind the baby, teach the four oldest their lessons, take care of my husband, and try to get enough sleep to be up by five in the morning. I guess if some lawyers worked as hard as I do they would have sense enough not to ask impertinent questions."

An amusing incident is recorded of how a feminine witness turned the laugh upon Mr. Francis L. Wellman, the noted cross-examiner. In his book he takes the opportunity to advise his lawyer readers to "avoid the mistake, so common among the inexperienced, of making much of trifling discrepancies. It has been aptly said," he continues, "that 'juries have no respect for small triumphs over a witness's self-possession or memory!' Allow the loquacious witness to talk on; he will be sure to involve himself in difficulties from which he can never extricate himself. *Some witnesses prove altogether too much; encourage them and lead them by degrees into exaggerations* that will conflict with the common-sense of the jury."

Mr. Wellman is famous for following this precept himself and, with one eye significantly cast upon the jury, is likely to lead his witness a merry dance until the latter is finally "bogged" in a quagmire of absurdities. Not long ago, shortly after the publication of his book, the lawyer had occasion to cross-examine a modest-looking young woman as to the speed of an electric car. The witness seemed conscious that she was about to undergo a severe ordeal, and Mr. Wellman, feeling himself complete master of the situation, began in his most winsome and deprecating manner:

"And how fast, Miss ——, would you say the car was going?"

"I really could not tell exactly, Mr. Wellman."

"Would you say that it was going at ten miles an hour?"

"Oh, fully that!"

"Twenty miles an hour?"

"Yes, I should say it was going twenty miles an hour."

"Will you say it was going thirty miles an hour?" inquired Wellman with a glance at the jury.

"Why, yes, I will say that it was."

"Will you say it was going forty?"

"Yes."

"Fifty?"

"Yes, I will say so."

"Seventy?"

"Yes."

"Eighty?"

"Yes," responded the young lady with a countenance absolutely devoid of expression.

"A hundred?" inquired the lawyer with a thrill of eager triumph in his voice.

There was a significant hush in the court-room Then the witness, with a patient smile and a slight lifting of her pretty eyebrows, remarked quietly:

"Mr. Wellman, *don't you think we have carried our little joke far enough?*"

There is no witness in the world more difficult to cope with than a shrewd old woman who apes stupidity, only to reiterate the gist of her testimony in such incisive fashion as to leave it indelibly imprinted on the minds of the jury. The lawyer is bound by every law of decency, policy and manners to treat the aged dame with the utmost consideration. He must allow her to ramble on discursively in defiance of every rule of law and evidence in answer to the simplest question; must receive imperturbably the opinions and speculations upon every subject of both herself and (through her) of her neighbors; only to find when he thinks she must be exhausted by her own volubility, that she is ready, at the slightest opportunity, to break away again into a tangle of guesswork and hearsay, interwoven with conclusions and ejaculation. Woe be unto him if he has not sense enough to waive her off the stand! He might as well try to harness a Valkyrie as to restrain a pugnacious old Irishwoman who is intent on getting the whole business before the jury in her own way.

In the recent case of Gustav Dinser, convicted of murder, a vigorous old lady took the stand and testified forcibly against the accused. She was as "smart as paint," as the saying goes, and resolutely refused to answer any questions put to her by counsel for the defence. Instead, she would raise her voice and make a savage onslaught upon the prisoner, rehearsing his brutal treatment of the deceased on previous occasions, and getting in the most damaging testimony.

"Do you say, Mrs. ——," the lawyer would inquire deferentially, "that you heard the sound of *three* blows?"

"Oh, thim blows!" the old lady would cry—"thim turrible blows! I could hear the villain as he laid thim on! I could hear the poor, pitiful groans av her, and she so sufferin'! 'Twas awful! Howly Saints, 'twould make yer blood run cowld!"

"Stop! stop!" exclaimed the lawyer.

"Ah, stop is it? Ye can't stop me till Oi've had me say to tell the whole truth. I says to me daughter Ellen, says I: 'Th' horrid baste is afther murtherin' the poor thing,' says I; 'run out an' git an officer!' "

"I object to all this!" shouts the lawyer.

"Ah, ye objec', do ye?" retorts the old lady. "Shure an' ye'd have been after objectin' if ye'd heard thim turrible blows that kilt her—the poor, sufferin', swate crayter! I hope he gits all that's comin' to him—bad cess to him for a blood-thirsty divil!"

The lawyer ignominiously abandoned the attack.

The writer recalls a somewhat similar instance, but one even better exhibiting the cleverness of an old woman, which occurred in the year 1901. A man named Orlando J. Hackett, of prepossessing appearance and manners, was on trial, charged with converting to his own use money which had been intrusted to him for investment in realty. The complainant was a shrewd old lady, who together with her daughter, had had a long series of transactions with Hackett which would have entirely confused the issue could the defence have brought them before the jury. The whole contention of the prosecution was that Hackett had received the money for one purpose and used it for another. During preparation for the trial the writer had had both ladies in his office and remembers making the remark:

"Now, Mrs. ——, don't forget that the charge here is that yóu gave Mr. Hackett the money to put into real estate. Nothing else is comparatively of much importance."

"Be sure and remember that, mother," the daughter had admonished her.

In the course of a month the case came on for trial before Recorder Goff, in Part II of the General Sessions. Mrs. —— gave her testimony with great positiveness. Mr. Lewis Stuyvesant Chanler, now Lieutenant-Governor of the State, arose to cross-examine her.

"Madam," he began courteously, "you say you gave the defendant money?"

"I told him to put it into real estate, *and he said he would!*" replied Mrs. —— firmly.

"I did not ask you that, Mrs. ——," politely interjected Mr. Chanler. "How *much* did you give him?"

"I told him to put it into real estate, and he said he would!" repeated the old lady wearily.

"But, madam, you do not answer my question!" exclaimed Chanler. "How *much* did you give him?"

"I told him to put it into real——" began the old lady again.

"Yes, yes!" cried the lawyer; "we know that! Answer the question."

"—— estate, *and he said he would!*" finished the old woman innocently.

"If your Honor please, I will excuse the witness. And I move that her answers be stricken out!" cried Chanler savagely.

The old lady was assisted from the stand, but as she made her way with difficulty towards the door of the court-room she could be heard repeating stubbornly:

"I told him to put it *into real estate,—and he said he would!*"

Almost needless to say, Hackett was convicted and sentenced to seven years in State's prison.

To recapitulate, the quickness and positiveness of women make them ordinarily better witnesses than men; they are vastly more difficult to cross-examine; their sex protects them from many of the most effective weapons of the lawyer, with the result that they are the more ready to yield to prevarication; and, even where the possibility of complete and unrestricted cross-examination is afforded, their tendency to inaccurately inferential reasoning, and their elusiveness in dodging from one conclusion to another, render the opportunity of little value.

In general, however, women's testimony differs little in quality from that of men, all testimony being subject to the same three great limitations irrespective of the sex of the witness, and the conclusions set forth above are merely the result of an effort on the part of the writer to comment somewhat upon those small differences which, under close scrutiny, may fairly be said to exist. These differences are quite as noticeable at the breakfast-table as in the court-room; and are no more patent to the advocate than to the ordinary male animal whose forehead habitually reddens when he hears the unanswerable reason which, in default of all others, explains and glorifies the mental action of his wife, sister or mother: "Just because!"

AS COMPLAINANTS AND DEFENDANTS

The ratio of women to men indicted and tried for crime is, roughly, about one to ten. Could adequate statistics be procured, the proportion of female to male complainants in criminal cases would very likely prove to be about the same. In a very substantial proportion, therefore, of all prosecutions for crime a woman is one of the chief actors. The law of the land compels the female prisoner to submit the question of her guilt or innocence to twelve individuals of the opposite sex; and permits the female complainant to rehearse the story of her wrongs before the same collection of colossal intellects and adamantine hearts.

The first thing the ordinary woman hastens to do if she be summoned to appear in a court of justice is not, as might be expected, to think over her testimony or try to recall facts obliterated or confused by time, but to buy a new hat; and precisely the same thing is true of the female defendant called to the bar of justice, whether it be for stealing a pair of gloves or poisoning her lover.

Yet how far does the element of sex defeat the ends of justice? To answer this question it is necessary to determine how far juries are liable to favor the testimony of a woman plaintiff merely because she is a woman, and how far sympathy for a woman arraigned as a prisoner is likely to warp their judgment.

As to the first, it is fairly safe to say that a woman is much more likely to win a verdict in a civil court or to persuade the jury that the prisoner is guilty in a criminal case than a man would be in precisely similar circumstances. In most criminal prosecutions for the ordinary run of felonies little injustice is likely to result from this. There is one exception, however, where juries should reach conclusions with extreme caution, namely, where certain charges are brought by women against members of the opposite sex.

Here the jury is apt to leap to a conclusion, rendered easy by the attractiveness of the witness and the feeling that the defendant is a "cur anyway," and ought to be "sent up."

The difficulty of determining, even in one's office, the true character of a plausible woman is enhanced tenfold in the court-room, where the lawyer is generally compelled to proceed upon the assumption that the witness is a person of irreproachable life and antecedents. Almost any young woman may create a favorable impression, provided her taste in dress be not too crude, and, even when it is so, the jury are not apt to distinguish carefully between that which cries to Heaven and that which is merely "elegant."

When the complaining witness is a woman who has merely lost money through the acts of the defendant, the jury are not so readily moved to accept her story *in toto* as when the crime charged is of a different character. They realize that the complainant, feeling that she has been injured, may be inclined to color her testimony, perhaps unconsciously, until the wrong becomes a crime.

An ordinary example of this variety of prosecution is where the witness is a young woman from the East Side, usually a Polish or Russian Jewess, who charges the defendant, a youth of about her own age, with stealing her money by means of false pretences. They have been engaged to be married, and she has turned over her small savings to him to purchase the diamond ring and perhaps set him up in a modest business of his own. He has then fallen in love with some other girl, has broken the engagement, and the ring now adorns the fourth finger of her rival. Her money is gone. She is without a *dot*. She hurries with her parents and loudly vociferating friends to the Essex Market Police Court, and secures a warrant for the defendant on the theory that he defrauded her by "trick and device" or "false representations." Usually the only "representation" has been a *promise* to marry her. Her real motive is revenge upon her faithless *fiancé*. In nine cases out of ten the fellow is a cad, who has deliberately deserted her after getting her money, but it is doubtful whether any real crime is involved.

If the judge lets the case go to the jury it is a pure gamble as to what the result will be, and it may largely turn on the girl's physical attractiveness. If she be pretty and demure a mixture of emotions is aroused in the jury. "He probably did love her," say the twelve, "because any one would be likely to do so. If he did love her, of course he didn't falsely pretend to do so; but if he deserted a woman like that he ought to be in jail anyway." Thus the argument that ought to *acquit* in fact may *convict* the defendant. If the rival also is pretty, hopeless confusion results;

while if the complainant be a homely girl the jury feels that he must have intended to swindle her anyway, as he could never have honestly intended to marry her. Thus in any case the Lothario is apt to pay a severe penalty for his faithlessness.

The man prosecuted by a woman, provided she cannot be persuaded to withdraw the charge against him, is likely to get but cold consideration for his side of the story and short shrift in the jury-room. Turn about, if he can get a young and attractive woman to swear to his alibi or good reputation the honest masculine citizen whom he has defrauded may very likely have to whistle for his revenge. Many a scamp has gone free by producing some sweetly demure maiden who faithfully swears that she knows him to be an honest man. A blush at the psychological moment and a wink from the lawyer is quite enough to lead the jury to believe that, if they acquit the defendant, they will "make the young lady happy," whereas if he is convicted she will remain for aye a heart-broken spinster. Like enough she may be only the merest acquaintance.

The writer is not likely to forget a distinguished lawyer's instructions to his client—who happened also to be a childhood acquaintance—as she was about to go into court as the plaintiff in a suit for damages:

"I would fold my hands in my lap, Gwendolyn

—yes, like that—and be calm, very calm. And, Gwendolyn, above all things, be *demure,* Gwendolyn! Be *demure!*"

Gwendolyn was the demurest of the demure, letting her eyes fall beneath their pendant black lashes at the conclusion of each answer, and won her case without the slightest difficulty.

The unconscious or conscious influence of women upon the intellects of jurymen has given rise to a very prevalent impression that it is difficult if not impossible successfully to prosecute a woman for crime. This feeling expresses itself in general statements to the effect that as things stand to-day a woman may commit murder with impunity. Experience, supplemented by the official records, demonstrates, however, that, curious as it must seem, the same sentiment aroused by a woman supposed to have been *wronged* is not inspired in a jury by a woman *accused* of crime. It is, indeed, true that juries are apt to be more lenient with women than with men, but this leniency shows itself not in acquitting them of the crimes charged against them, but of finding them guilty in lower degrees.

Of course flagrant miscarriages of justice frequently occur, which, by reason of their widespread publicity in the press, would seem to justify the almost universal opinion that women are immune from the penalities for homicide. It is also true that such miscarriages of justice are more likely when the defendant is a woman than if he be a man.

One of these hysterical acquittals which give color to popular impression, but which the writer believes to be an exception, was the case of a young mother tried and acquitted for murder in the first degree, December 22, 1904. This young woman, whose history was pathetic in the extreme, was shown clearly by the evidence to have deliberately taken the life of her child by giving it carbolic acid. The story was a shocking one, yet the jury apparently never considered at all the possibility of convicting her, but on retiring to the jury-room spent their time in discussing how much money they should present her on her acquittal.

No better actor ever played a part upon the court-room stage than old "Bill" Howe. His every move and gesture was considered with reference to its effect upon the jury, and the climax of his summing-up was always accompanied by some dramatic exhibition calculated to arouse sympathy for his client. Himself an adept at shedding tears at will, he seemed able to induce them when needed in the lachrymal glands of the most hardened culprit whom he happened to be defending.

Mr. Wellman tells the story of how he was once prosecuting a woman for the murder of her lover, whom she had shot rather than allow him to desert her. She was a parson's daughter who had gone wrong and there seemed little to be said in her behalf. She sat at the bar the picture of injured innocence, with a look of spirituality which she must have conjured up from the storehouse of her memories of her father. Howe was rather an exquisite so far as his personal habits were concerned, and allowed his finger-nails to grow to an extraordinary length. He had arranged that at the climax of his address to the jury he would turn and, tearing away the slender hands of his client from her tear-stained face, challenge the jury to find guilt written there. Wellman was totally unprepared for this and a shiver ran down his spine when he saw Howe, his face apparently surcharged with emotion, turn suddenly towards his client and roughly thrust away her hands. As he did so he embedded his finger-nails in her cheeks, and the girl uttered an involuntary scream of nervous terror and pain that made the jury turn cold.

"Look, gentlemen! Look in this poor creature's face! Does she look like a guilty woman? No! A thousand times no! Those are the tears of innocence and shame! Send her back to her aged father to comfort his old age! Let him clasp her in his arms and press his trembling lips to her hollow eyes! Let him wipe away her tears and bid her sin no more!"

The jury acquitted, and Wellman, aghast, followed them downstairs to inquire how such a thing were possible. The jurors said that they had agreed to disclose nothing of their deliberations.

"But," explained Wellman, "you see, in a way I am your attorney, and I want to know how to do better next time. She had offered to plead guilty if she could get off with twenty years!"

The abashed jury slunk downstairs in silence and the secret of their deliberations remains as yet untold.

In spite of such cases, where guilty women have been acquitted through maudlin sentiment or in response to popular clamor, nothing could be more erroneous than the idea that few women who are brought to the bar of justice are made to suffer for their offences. Thus, although no woman has suffered the death penalty in New York County in twenty years, *the average number of convictions for crime is practically the same for women as for men in proportion to the number indicted.* The last unreversed conviction of a woman for murder in the first degree was that of Chiara Cignarale, in May, 1887. Her sentence was commuted to life imprisonment. Since then thirty women have been actually tried before juries for homicide with the following results:

Convicted of murder in first degree	0
Acquitted	7
" " murder in second degree	3
" " manslaughter in first degree	10
" " manslaughter in second degree	10
Total	30

The percentage of convictions to acquittals is as follows:

	Convictions	Acquittals	Convictions Per Cent	Acquittals Per Cent
1887–1907	23	7	77	23

It is distinctly interesting to compare this with the table showing the results of all the homicide trials for the past eight years irrespective of the sex of the defendants:

	Convictions	Acquittals	Convictions Per Cent	Acquittals Per Cent
1900	5	12	29	71
1901	17	17	50	50
1902	15	11	58	42
1903	24	8	75	25
1904	19	14	58	42
1905	18	13	58	42
1906	21	22	49	51
1907	16	10	62	38
Total	135	107	Aver. 55	Aver. 45

The reader will observe that the percentage of convictions to acquittals of women defendants averages twenty-two per cent greater than the percentage for both sexes. A more elaborate table would show that where the defendants are men there are a greater proportionate number of *acquittals,* but more verdicts in higher degrees. A verdict of manslaughter in the second degree in the case of a man charged with murder is infrequent, but convictions of murder in the second degree are exceedingly common.

The reason for the higher percentage of convictions of women is that fewer women who commit crime are prosecuted than men, and that they are rarely indicted unless they are clearly guilty of the degree of crime charged against them; while practically every man who is charged with homicide and who, it seems, may be found guilty is indicted for murder in the first degree.

The trial of women for crime invariably arouses keen public interest, and the dethronement of a Czar, or the assassination of an Emperor, pales to insignificance before the prosecution of a woman for murder. Some of this interest is fictitious and stimulated merely by the yellow press, but a great deal of it is genuine. The writer remembers attending a dinner of gray-headed judges and counsellors during the trial of Anna Eliza, alias "Nan," Patterson, where one would have supposed that the lightest subject of conversation would be not less weighty than the constitutionality of an income tax, and finding to his astonishment that the only topic for which they showed any zest was whether "Nan" would be found guilty.

One of the earliest, if not the earliest, record of a woman being held for murder is that of Agnes Archer, indicted by twelve men on April 4, 1435, sworn before the mayor and coroner to inquire as to the death of Alice Colynbourgh. The quaint old report begins in Latin, but "the pleadings" are set forth in the language of the day, as follows:

"Agnes Archer, is that thy name? which answered, yes. . . . Thou art endyted that thou . . . . feloney moderiste her with a knyff fyve tymes in the throte stekyng, throwe the wheche stekyng the saide Alys is deed. . . . I am not guilty of thoo dedys, ne noon of hem, God help me so. . . . How wylte thou acquite the? . . . By God and by my neighbours of this town."

The subsequent history of Agnes is lost in obscurity, but since she had to procure but thirty-six compurgators who were prepared to swear that they believed her innocent, and as she was at liberty to choose these herself from her native village of Winchelsea, it is probable that she escaped.*

Fortunately the sight of a woman, save of the very lowest class, at the bar of justice is rare. The number of cases where women of good environment appear as defendants in the criminal courts in the course of a year may be numbered upon the fingers of a single hand, and, although the number of female defendants may equal ten per cent of the total number of males, not one-tenth of the women brought to the bar of justice have had the benefit of an honest bringing up and good surroundings.

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* Cf. Thayer, as cited, *supra.*

CHAPTER VIII

Tricks of the Trade

"TRICKS and treachery," said Benjamin Franklin, "are the practice of fools that have not wit enough to be honest." Had the kindly philosopher been familiar with all the exigencies of the criminal law he might have added a qualification to this somewhat general, if indisputably moral, maxim. Though it doubtless remains true as a guiding principle of life that "Honesty is the best policy," it would be an unwarrantable aspersion upon the intellectual qualities of the members of the criminal bar to say that the tricks by virtue of which they often get their clients off are *"the practice of fools."* On the contrary, observation would seem to indicate that in many instances the wiser, or at least the more successful, the practitioner of criminal law becomes, the more numerous and ingenious become the "tricks" which are his stock in trade. This must not be taken to mean that there are not high-minded and conscientious practitioners of criminal law, many of them financially successful, some filled with a noble humanitarian purpose, and some drawn to their calling by a sincere enthusiasm for the vocation of the advocate which, in these days of "business" law and commercial methods, reaches perhaps its highest form in the criminal courts.

There are no more "tricks" practised in these tribunals than in the civil, but they are more ingenious in conception, more lawless in character, bolder in execution and less shamefaced in detection.

Let us not be too hard upon our brethren of the criminal branch. Truly, their business is to "get their clients off." It is unquestionably a generally accepted principle that it is better that ninety-nine guilty men should escape than that one innocent man should be convicted. However much persons of argumentative or philosophic disposition may care to quarrel with this doctrine, they must at least admit that it would doubtless appear to them of vital truth were they defending some trembling client concerning whose guilt or innocence they were themselves somewhat in doubt. "Charity believeth all things," and the prisoner is entitled to every reasonable doubt, even from his own lawyer. It is the lawyer's business to create such a doubt if he can, and we must not be too censorious if, in his eagerness to raise this in the minds of the jury, he sometimes oversteps the bounds of propriety, appeals to popular prejudices and emotions, makes illogical deductions from the evidence, and impugns the motives of the prosecution. The district attorney should be able to take care of himself, handle the evidence in logical fashion, and tear away the flimsy curtain of sentimentality hoisted by the defence. These are hardly "tricks" at all, but sometimes under the name of advocacy a trick is "turned" which deserves a much harsher name.

Not long ago a celebrated case of murder was moved for trial after the defendant's lawyer had urged him in vain to offer a plea of murder in the second degree. A jury was summoned and, as is the usual custom in such cases, examined separately on the *"voir dire"* as to their fitness to serve. The defendant was a German, and the prosecutor succeeded in keeping all Germans off the jury until the eleventh seat was to be filled, when he found his peremptory challenges exhausted. Then the lawyer for the prisoner managed to slip in a stout old Teuton, who replied, in answer to a question as to his place of nativity, "Schleswig-Holstein." The lawyer made a note of it, and, the box filled, the trial proceeded with unwonted expedition.

The defendant was charged with having murdered a woman with whom he had been intimate, and his guilt of murder in the first degree was demonstrated upon the evidence beyond peradventure. At the conclusion of the case, the defendant not having dared to take the stand, the lawyer arose to address the jury in behalf of what appeared a hopeless cause. Even the old German in the back row seemed plunged in soporific inattention. After a few introductory remarks the lawyer raised his voice and in heart-rending tones began:

"In the beautiful county of *Schleswig-Holstein* sits a woman old and gray, waiting the message of your verdict from beyond the seas." (Number 11 opened his eyes and looked at the lawyer as if not quite sure of what he had heard.) "There she sits" (continued the attorney), "in *Schleswig-Holstein,* by her cottage window, waiting, waiting to learn whether her boy is to be returned to her outstretched arms." (Number 11 sat up and rubbed his forehead.) "Had the woman, who so unhappily met her death at the hands of my unfortunate client, been *like those women of Schleswig-Holstein*—noble, sweet, pure, lovely women of *Schleswig-Holstein*—I should have naught to say to you in his behalf." (Number 11 leaned forward and gazed searchingly into the lawyer's face.) "But alas, no! *Schleswig-Holstein* produces a virtue, a loveliness, a nobility of its own." (Number 11 sat up and proudly expanded his chest.)

When, after about an hour or more of *Schleswig-Holstein* the defendant's counsel surrendered the floor to the district attorney, the latter found it quite impossible to secure the slightest attention from the eleventh juror, who seemed to be spending his time in casting compassionate glances in the direction of the prisoner. In due course the jury retired, but had no sooner reached their room and closed the door than the old Teuton cried, "Dot man iss *not guilty!*" The other eleven wrestled with him in vain. He remained impervious to argument for seventeen hours, declining to discuss the evidence, and muttering at intervals, "Dot man iss *not guilty!*" The other eleven stood unanimously for murder in the first degree, which was the only logical verdict that could possibly have been returned upon the evidence.

At last, worn out with their efforts, they finally induced the old Teuton to compromise with them on a verdict of manslaughter. Wearily they straggled in, the old native of Schleswig-Holstein bringing up the rear, bursting with exultation and with victory in his eye.

"Gentlemen of the jury, have you agreed upon a verdict?" inquired the clerk.

"We have," replied the foreman.

"How say you, do you find the defendant guilty or not guilty?"

"Guilty—of manslaughter," returned the foreman feebly.

The district attorney was aghast at such a miscarriage of justice, and the judge showed plainly by his demeanor his opinion of such a verdict. But the old inhabitant of Schleswig-Holstein cared for this not a whit. The old mother in Schleswig-Holstein might still clasp her son in her arms before she died! The defendant was arraigned at the bar. Then for the first time, and to the surprise and disgust of No. 11, he admitted in answer to the questions of the clerk that his parents were *both dead* and that he was born in *Hamburg*, a town for whose inhabitants the old juryman had, like others of his compatriots, a constitutional antipathy.

The "tricks" of the trade as practised by the astute and unscrupulous criminal lawyer vary with the stage of the case and the character of the crime charged. They are also adapted with careful attention to the disposition, experience and capacity of the particular district attorney who happens to be trying the case against the defendant. An illustration of one of these occurred during the prosecution of a bartender for selling "spirituous liquors" without a proper license. He was defended by an old war-horse of the criminal bar famous for his astuteness and ability to laugh a case out of court. The assistant district attorney who appeared against him was a young man recently appointed to office, and who was almost overcome at the idea of trying a case against so well known a practitioner. He had personally conducted but very few cases, had an excessive conception of his own dignity, and dreaded nothing so much as to appear ridiculous. Everything, except the evidence, favored the defendant, who, however, was, beyond every doubt, guilty of the offence charged.

The young assistant put in his case, calling his witnesses one by one, and examining them with the most feverish anxiety lest he should forget something. The lawyer for the defence made no cross-examination and contented himself with smiling blandly as each witness left the stand. The youthful prosecutor became more and more nervous. He was sure that something was wrong, but he couldn't just make out what. At the conclusion of the People's case the lawyer inquired, with a broad grin, "if that was all."

The young assistant replied that it was, and that, in his opinion, it was "quite enough."

"Let that be noted by the stenographer," remarked the lawyer. "Now, if your Honors please," he continued, addressing the three judges of the Special Sessions, "you all know how interested I am to see these young lawyers growing up. I like to help 'em along—give 'em a chance—teach 'em a thing or two. I trust it may not be out of place for me to say that I like my young friend here and think he tried his case very well. But he has a great deal to learn. I'm always glad, as I said, to give the boys a chance—to give 'em a little experience. I shall not put my client upon the stand. It is not necessary. *The fact is,"* turning suddenly to the unfortunate assistant district attorney—"my client *has* a license." He drew from his pocket a folded paper and handed it to the paralyzed young attorney with the harsh demand: "What do you say to that?"

The assistant took the paper in trembling fingers and perused it as well as he could in his unnerved condition.

"Mr. District Attorney," remarked the presiding justice dryly (which did not lessen the confusion of the young lawyer), "is this a fact? Has the defendant a license?"

"Yes, your Honors," replied the assistant; "this paper seems to be a license."

"Defendant discharged!" remarked the court briefly.

The prisoner stepped from the bar and rapidly disappeared through the door of the court-room. After enough time had elapsed to give him a good start and while another case was being called, the old lawyer leaned over to the assistant and remarked with a chuckle:

"I am always glad to give the boys a chance—help 'em along—teach 'em a little. That license was a *beer* license!"

Tricks of the Trade

BEFORE TRIAL

To begin at the beginning, whenever a person has been arrested, charged with crime, and has secured a criminal lawyer to defend him, the first move of the latter is naturally to try and nip the case in the bud by inducing the complaining witness to abandon the prosecution. In a vast number of cases he is successful. He appeals to the charity of the injured party, quotes a little of the Scriptures and the "Golden Rule," pictures the destitute condition of the defendant's family should he be cast into prison, and the dragging of an honored name in the gutter if he should be convicted. Few complainants have ever before appeared in a police court, and are filled with repugnance at the rough treatement of prisoners and the suffering which they observe upon every side. After they have seen the prisoner emerge from the cells, pale, hollow-eyed, bedraggled, and have beheld the tears of his wife and children as they crowd around the husband and father, they begin to realize the horrible consequences of a criminal prosecution and to regret that they ever took the steps which have brought the wrong-doer where he is. The district attorney has not yet taken up the case; the prosecution up to this point is of a private character; there are loud promises of "restitution" and future good behavior from the defendant, and the occasion is ripe for the lawyer to urge the complainant to "temper justice with mercy" and withdraw "before it be too late and the poor man be ruined forever."

If the complainant is, however, bent on bringing the defendant to justice and remains adamantine to the arguments of the lawyer and the tears of the defendant's family connections, it remains for the prisoner's attorney to endeavor to get the case adjourned "until matters can be adjusted"—to wit, restitution made if money has been stolen, or doctors' bills paid if a head has been cracked, with perhaps another chance of "pulling off" the complainant and his witnesses. Failing in an attempt to secure an adjournment, two courses remain open: first, to persuade the court that the matter is a trivial one arising out of petty spite, is all a mistake, or that at best it is a case of "disorderly conduct" (and thus induce the judge to "turn the case out" or inflict some trifling punishment in the shape of a fine); or, second, if it be clear that a real crime has been committed, to clamor for an immediate hearing in order, if it be secured, to subject the prosecution's witnesses to a most exhaustive cross-examination, and thus get a clear idea of just what evidence there is against the accused.

At the conclusion of the complainant's case, if it appear reasonably certain that the magistrate will "hold" the prisoner for the action of a superior court, the lawyer will then "waive further examination," or, in other words, put in no defence, preferring the certainty of having to face a jury trial to affording in prosecution an opportunity to discover exactly what defence will be put in and to secure evidence in advance of the trial to rebut it. Thus it rarely happens in criminal cases of importance that the district attorney knows what the defence is to be until the defendant himself takes the stand, and, by "waiving further examination" in the police court, the astute criminal attorney may select at his leisure the defence best suited to fit in with and render nugatory the prosecution's evidence.

The writer has frequently been told by the attorney for a defendant *on trial* for crime that "the defence has not yet been decided upon." In fact, such statements are exceedingly common. In many courts the attitude of all parties concerned seems to be that the defendant will put up a perjured defence (so far as his own testimony is concerned, at any rate) as a matter of course, and that this is hardly to be taken against him.

On the other hand, if a guilty defendant has been so badly advised as to give his own version of the case before the magistrate in the first instance, it requires but slight assiduity on the part of the district attorney to secure, in the interval between the hearing and the jury trial, ample evidence to rebut it.

As illustrating merely the fertility and resourcefulness of some defendants (or perhaps their counsel), the writer recalls a case which he tried in the year 1902 where the defendant, a druggist, was charged with manslaughter in having caused the death of an infant by filling a doctor's prescription for calomel with morphine. It so happened that two jars containing standard pills had been standing side by side upon an adjacent shelf, and, a prescription for morphine having come in at the same time as that for the calomel, the druggist had carelessly filled the morphine prescription with calomel, and the calomel prescription with morphine. The adult for whom the morphine had been prescribed recovered immediately under the beneficent influence of the calomel, but the baby for whom the calomel had been ordered died from the effects of the first morphine pill administered. All this had occurred in 1897—five years before. The remainder of the pills had disappeared.

Upon the trial (no inconsistent contention having been entered in the police court) the prisoner's counsel introduced six separate defences, to wit: That the prescription had been *properly* filled with calomel and that the child had died from natural causes, the following being suggested.

1. Acute gastritis.
2. Acute nephritis.
3. Cerebro-spinal meningitis.
4. Fulminating meningitis.
5. That the child had died of *apomorphine*, a totally distinct poison.
6. That it had received and taken calomel, but that, having eaten a small piece of pickle shortly before, the conjunction of the vegetable acid with the calomel had formed, in the child's stomach, a precipitate of corrosive sublimate, from which it had died.

These were all argued with great learning. During the trial the box containing the balance of the pills, which the defence contended were calomel, unexpectedly turned up. It has always been one of the greatest regrets of the writer's life that he did not then and there challenge the defendant *to eat one of the pills* and thus prove the good faith of his defence.

This was one of the very rare cases where a chemical analysis has been conducted in open court. The chemist first tested a standard trade morphine pill with sulphuric acid, so that the jury could personally observe the various color reactions for themselves. He then took one of the contested pills and subjected it to the same test. The first pill had at once turned to a brilliant rose, but the contested pill, being antiquated, "hung fire," as it were, for some seconds. As nothing occurred, dismay made itself evident on the face of the prosecutor, and for a moment he felt that all was lost. Then the five-year-old pill slowly turned to a faint brown, changed to a yellowish red, and finally broke into an ardent rose. The jury settled back into their seats with an audible "Ah!" and the defendant was convicted.

Let us return, however, to that point in the proceedings where the defendant has been "held for trial" by the magistrate. The prisoner's counsel now endeavors to convince the district attorney that "there is nothing in the case," and continues unremittingly to work upon the feelings of the complainant. If he finds that his labors are likely to be fruitless in both directions, he may now seek an opportunity to secure permission for his client to appear before the grand jury and explain away, if possible, the charge against him.

We will assume, however, that, in spite of the assiduity of his lawyer, the prisoner has at last been indicted and is awaiting trial. What can be done about it? Of course, if the case could be indefinitely adjourned, the complainant or his chief witness might die or move away to some other jurisdiction, and if the indictment could be "pigeon-holed" the case might die a natural death of itself. Indictments, however, in New York County, whatever may be the case elsewhere, are no longer "pigeon-holed," and they cannot be adequately "lost," since certified copies are made of each. The next step, therefore, is to secure as long a time as possible before trial.

Usually a prisoner has nothing to lose and everything to gain by delay, and the excuses offered for adjournment are often ingenious in the extreme. The writer knows one criminal attorney who, if driven to the wall in the matter of excuses, will always serenely announce the death of a near relative and the obligation devolving upon him to attend the funeral. Another, as a last resort, regularly is attacked in open court by severe cramps in the stomach. If the court insists on the trial proceeding, he invariably recovers. Of course, there are many legitimate reasons for adjourning cases which the prosecution is powerless to combat.

The most effective method invoked to secure delay, and one which it is practically useless for the district attorney to oppose, is an application "to take testimony" upon commission in some distant place. Here again it must be borne in mind that such applications are often legitimate and proper and should be granted in simple justice to the defendant. Although this right to take the testimony of absent witnesses is confined in New York State to the defendant and does not extend to the prosecution, and is undoubtedly often the subject of much abuse, it not infrequently is the cause of saving an innocent man.

An example of this was the case of William H. Ellis, recently brought into the public eye through his connection with the treaty between the United States Government and King Menelik of Abyssinia. Ellis was accused in 1901 by a young woman of apparently excellent antecedents and character of a serious crime. Prior to his indictment a colored man employed in his office (the alleged scene of the crime) disappeared. When the case was moved for trial, Ellis, through his attorneys, moved for a commission to take the testimony of this absent, but clearly material, witness in one of the remote States of Mexico—a proceeding which would require a journey of some two weeks on muleback, beyond the railway terminus. The district attorney, in view of the peculiarly opportune disappearance of this person from the jurisdiction, strenuously opposed the application and hinted at collusion between Ellis and the witness. The application, however, was granted, and a delay of over a month ensued. During that time evidence was procured by the counsel of the prisoner showing conclusively that the complaining witness *was mentally unsound and had made similar and groundless charges against others.* The indictment was at once dismissed. . .

But such delays are not always so righteously employed. There is a story told of a case where a notorious character was charged with the unusual crime of "mayhem"—biting off another man's finger. The defendant's counsel secured adjournment after adjournment—no one knew why. At last the case was moved for trial and the prosecution put in its evidence, clearly showing the guilt of the prisoner. At the conclusion of the People's testimony, the lawyer for the defendant arose and harshly stigmatized the story of the complainant as a "pack of lies."

"I will prove to you in a moment, gentlemen," exclaimed he to the jury, "how absurd is this charge against my innocent client. Take the stand!"

The prisoner arose and walked to the witness-chair.

"Open your mouth!" shouted the lawyer.

The defendant did so. He had not a tooth in his head. The delay had been advantageously employed.

The importance of mere delay to a guilty defendant cannot well be overestimated. "You never can tell what may happen to knock a case on the head." For this reason a sufficiently paid and properly equipped counsel will run the whole gamut of criminal procedure, and—

1. Demur to the indictment.

2. Move for an inspection of the minutes of the proceedings before the grand jury.

3. Move to dismiss the indictment for lack of sufficient evidence before that body.

4. Move for a commission to take testimony.

5. Move for a change of venue.

6. Secure, where possible, a writ of habeas corpus and a stay of proceedings from some federal judge on the ground that his client is confined without due process of law.

All these steps he will take *seriatim,* and some cases have been delayed for as much as two years by merely invoking "legitimate" legal processes. In point of fact it is quite possible for any defendant absolutely to prevent an immediate trial provided he has the services of vigilant counsel, for these are not the only proceedings of which he can avail himself.

A totally distinct method is for the defendant to secure bail, and, after securing as many adjournments as possible, simply flee the jurisdiction. He will then remain away until the case is hopelessly stale, or he no longer fears prosecution.

In default of all else he may go "insane" just before the case is moved for trial. This habit of the criminal rich when brought to book for their misdeeds is too well known to require comment. All that is necessary is for a sufficient number of "expert" alienists to declare it to be their opinion that the defendant is mentally incapable of understanding the proceedings against him or of preparing his defence, and he is shifted off to a "sanitarium" until some new sensation occupies the public mind and his offences are partially forgotten.

In this way justice is often thwarted and the law cheated of its victim, but unless fortune favors him, sooner or later the indicted man must return for trial and submit the charge against him to a jury. But if this happens, even if he be guilty, all hope need not be lost. There are still "tricks of the trade" which may save him from the clutches of the law.

AT THE TRIAL

What can be done when at last the prisoner who has fought presistently for adjournment has been forced to face the witnesses against him and submit the evidence to a jury of peers? Let us assume further that he has been "out on bail," with plenty of opportunity to prepare his defence and lay his plans for escape.

When the case is finally called and the defendant takes his seat at the bar after a lapse of anywhere from six months to a year or more after his arrest, the first question for the district attorney to investigate is whether or no the person presenting himself for trial be in point of fact the individual mentioned in the indictment. This is often a difficult matter to determine. "Ringers" —particularly in the magistrates' courts—are by no means unknown. Sometimes they appear even in the higher courts. If the defendant be an ex-convict or a well-known crook, his photograph and measurements will speedily remove all doubt upon the subject, but if he be a foreigner (particularly a Pole, Italian or a Chinaman), or even merely one of the homogeneous inhabitants of the densely-populated East Side of New York, it is sometimes a puzzling problem. "Mock Duck," the celebrated Highbinder of Chinatown, who was set free after two lengthy trials for murder, was charged not long ago with a second assassination. He was pointed out to the police by various Chinamen, arrested and brought into the Criminal Courts building for identification, but for a long time it was a matter of uncertainty whether friends of his (masquerading as enemies) had not surrendered a substitute. Luckily the assistant district attorney who had prosecuted this wily and dangerous Celestial in the first instance was able to identify him.

Many years ago, during the days of Fernando Wood, a connection of his was reputed to be the power behind the "policy" business in New York City—the predecessor of the notorious Al Adams. A "runner" belonging to the system having been arrested and policy slips having been found in his possession, the reigning Policy King retained a lawyer of eminent respectability to see what could be done about it. The defendant was a particularly valuable man in the business and one for whom his employer desired to do everything in his power. The lawyer advised the defendant to plead guilty, provided the judge could be induced to let him off with a fine, which the policy King agreed to pay. Accordingly, the lawyer visited the judge in his chambers and the latter practically promised to inflict only a fine in case the defendant, whom we will call, out of consideration for his memory, "Johnny Dough," should plead guilty. Unfortunately for this very satisfactory arrangement, the judge, now long since deceased, was afflicted with a serious mental trouble which occasionally manifested itself in peculiar losses of memory. When "Johnny Dough," the Policy King's favorite, was arraigned at the bar and, in answer to the clerk's interrogation, stated that he withdrew his plea of "not guilty" and now stood ready to plead "guilty," the judge, to the surprise and consternation of the lawyer, the defendant, and the latter's assembled friends, turned upon him and exclaimed:

"Ha! So you plead guilty, do you? Well, I sentence you to the penitentiary for one year, you miserable scoundrel!"

Utterly overwhelmed, "Johnny Dough!" was led away, while his lawyer and relatives retired to the corridor to express their opinion of the court. About three months later the lawyer, who had heard nothing further concerning the case, happened to be in the office of the district attorney, when the latter looked up with a smile and inquired:

"Well, how's your client—Mr. Dough?"

"Safe on the Island, I suppose," replied the lawyer.

"Not a bit of it," returned the district attorney. "He never went there."

"What do you mean?" inquired the lawyer. "I heard him sentenced to a year myself!"

"I can't help that," said the district attorney. "The other day a workingman went down to the Island to see his old friend 'Johnny Dough.' There was only one 'Johnny Dough' on the lists, but when he was produced the visitor exclaimed: '*That* Johnny Dough! That ain't him *at all*, at all!' The visitor departed in disgust. We instituted an investigation and found that the man at the Island was a 'ringer.' "

"You don't say!" cried the lawyer.

"Yes," continued the district attorney. "But that is not the best part of it. You see, the 'ringer' says he was to get two hundred dollars per month for each month of Dough's sentence which he served. The prison authorities have refused to keep him any longer, and *now he is suing them for damages,* and is trying to get a writ of mandamus to compel them to take him back and let him serve out the rest of the sentence!"

Probably the most successful instance on record of making use of a dummy occurred in the early stages of the now famous Morse-Dodge divorce tangle. Dodge had been the first husband of Mrs. Morse, and from him she had secured a divorce. A proceeding to effect the annulment of her second marriage had been begun on the ground that Dodge had never been legally served with the papers in the original divorce case—in other words, to establish the fact that she was still, in spite of her marriage to Morse, the wife of Dodge. Dodge appeared in New York and swore that he had never been served with any papers. A well-known and reputable lawyer, on the other hand, Mr. Sweetser, was prepared to swear that he had served them personally upon Dodge himself. The matter was sent by the court to a referee. At the hour set for the hearing in the referee's office, Messrs. Hummel and Steinhardt arrived early, in company with a third person, and took their seats with their backs to a window on one side of the table, at the head of which sat the referee, and opposite ex-Judge Fursman, attorney for Mrs. Morse. Mr. Sweetser was late. Presently he appeared, entered the office hurriedly, bowed to the referee, apologized for being tardy, greeted Messrs. Steinhardt and Hummel, and then, turning to their companion, exclaimed: "How do you do, Mr. Dodge?" It was not Dodge at all, but an acquaintance of one of Howe & Hummel's office force who had been asked to accommodate them. Nothing had been said, no representations had been made, and Sweetser had voluntarily walked into a trap.

The attempt to induce witnesses to identify "dummies" is frequently made by both sides in criminal cases, and under certain circumstances is generally regarded as professional. Of course, in such instances no false suggestions are made, the witness himself being relied upon to "drop the fall." In case he does identify the wrong person, he has, of course, invalidated his entire testimony.

Not in one case out of five hundred, however, is any attempt made to substitute a "dummy" for the real defendant, the reason being, presumably, the prejudice innocent people have against going to prison even for a large reward. The question resolves itself, therefore, into how to get the client off when he is actually on trial. First, how can the sympathies of the jury be enlisted at the very start? Weeping wives and wailing infants are a drug on the market. It is a friendless man indeed, even if he be a bachelor, who cannot procure for the purposes of his trial the services of a temporary wife and miscellaneous collection of children. Not that he need swear that they are his! They are merely lined up along a bench well to the front of the court-room—the imagination of the juryman does the rest.

A defendant's counsel always endeavors to impress the jury with the idea that all he wants is a fair, open trial—and that he has nothing in the world to conceal. This usually takes the form of a loud announcement that *he* is willing "to take the first twelve men who enter the box." Inasmuch as the defence needs only to secure the vote of one juryman to procure a disagreement, this offer is a comparatively safe one for the defendant to make, since the prosecutor, who must secure unanimity on the part of the jury (at least in New York State), can afford to take no chances of letting an incompetent or otherwise unfit talesman slip into the box. Caution requires him to *examine* the jury in every important case, and frequently this ruse on the part of the defendant makes it appear as if the State had less confidence in its case than the defence. This trick was invariably used by the late William F. Howe in all homicide cases where he appeared for the defence.

The next step is to slip some juryman into the box who is likely for any one of a thousand reasons to lean toward the defence—as, for example, one who is of the same religion, nationality or even name as the defendant. The writer once tried a case where the defendant was a Hebrew named Bauman, charged with perjury. Mr. Abraham Levy was the counsel for the defendant. Having left an associate to select the jury the writer returned to the courtroom to find that his friend had chosen for foreman a Hebrew named *Abraham Levy*. Needless to say, a disagreement of the jury was the almost inevitable result. The same lawyer not many years ago defended a *client* named Abraham Levy. In like manner he managed to get an Abraham Levy on the jury, and on that occasion succeeded in getting his client off scot-free.

No method is too far-fetched to be made use of on the chance of "catching" some stray talesman. In a case defended by Ambrose Hal. Purdy, where the deceased had been wantonly stabbed to death by a blood-thirsty Italian shortly after the assassination of President McKinley, the defence was interposed that a quarrel had arisen between the two men owing to the fact that the deceased had loudly proclaimed anarchistic doctrines and openly gloried in the death of the President, that the defendant had expostulated with him, whereupon the deceased had violently attacked the prisoner, who had killed him in self-defence.

The whole thing was so thin as to deceive nobody, but Mr. Purdy, as each talesman took the witness-chair to be examined on the *voir dire*, solemnly asked each one:

"Pardon me for asking such a question at this time——it is only my duty to my unfortunate client that impels me to it—but have you any sympathy with anarchy or with assassination?"

The talesman, of course, inevitably replied in the negative.

"Thank you, sir," Purdy would continue. "In that event you are entirely acceptable!"

Not long ago two shrewd Irish attorneys were engaged in defending a client charged with an atrocious murder. The defendant had the most Hebraic cast of countenance imaginable, and a beard that reached to his waist. Practically the only question which these lawyers put to the different talesmen during the selection of the jury was, "Have you any prejudice against the defendant *on account of his race?*" In due course they succeeded in getting several Hebrews upon the jury who managed in the jury-room to argue the verdict down from murder to manslaughter in the second degree. As the defendant was being taken across the bridge to the Tombs he fell on his knees and offered up a heartfelt prayer such as could only have emanated from the lips of a devout Roman Catholic.

Lawyers frequently secure the good-will of jurors (which may last throughout the trial and show itself in the verdict) by some happy remark during the early stages of the case. During the Clancy murder trial each side exhausted its thirty peremptory challenges and also the entire panel of jurors in filling the box. At this stage of the case the foreman became ill and had to be excused. No jurors were left except one who had been excused by mutual consent for some trifling reason, and who out of curiosity had remained in court. He rejoiced in the name of Stone. Both sides then agreed to accept him as foreman provided he was still willing to serve, and this proving to be the case he triumphantly made his way towards the box. As he did so, the defendant's counsel remarked: "The Stone which the builders refused is become the head Stone of the corner." The good-will generated by this meágre jest stood him later in excellent stead.

In default of any other defence, some criminal attorneys have been known to seek to excite sympathy for their helpless clients by appearing in court so intoxicated as to be manifestly unable to take care of the defendant's interests, and prisoners have frequently been acquitted simply by virtue of their lawyer's obvious incapacity. The attitude of the jury in such cases seems to be that the defendant has not had a "fair show" and so should be acquitted anyway. Of course, this appeals to the juryman's sympathies and he overlooks the fact that by his action the prosecution is given no "show" at all.

Generally speaking, the advice credited to Mr. Lincoln, as being given by him to a young attorney who was about to defend a presumably guilty client, is religiously followed by all criminal practitioners:

"Well, my boy, if you've got a good case, stick to the evidence; if you've got a weak one, go for the People's witnesses; but—if you've got no case at all, *hammer the district attorney!*"

As a rule, however, criminal lawyers are not in a position to "hammer" the prosecuting officer, but endeavor instead to suggest by innuendo or even open declaration his bias and unfairness.

"Be *fair*, Mr.——!" is the continual cry. "Try to be *fair!*"

The defendant, whether he be an ex-convict or thirty-year-old professional thief, is always "this poor boy," and, as he is not compelled by law to testify, and as his failure to do so must not be weighed against him by the jury, he frequently walks out of court a free man, because the jury believe from the lawyer's remarks that he is in fact a mere youthful offender of hitherto good reputation and deserves another chance.

By all odds the greatest abuse in criminal trials lies in the open disregard of professional ethics on the part of lawyers who deliberately supply of themselves, in their opening and closing addresses to the jury, what incompetent bits of evidence, true or false, they have not been able to establish by their witnesses. There is no complete cure for this, for even if the judge rebukes the lawyer and directs the jury to disregard what he has said as "not being in the evidence," the damage has been done, the statement still lingering in the jury's mind without any opportunity on the part of the prosecutor to disprove it. There is no antidote for such jury-poison. A shyster lawyer need but to keep his client off the stand and he can saturate the jury's mind with any facts concerning the defendant's respectability and history which his imagination is powerful enough to supply. On such occasions an ex-convict with no relatives may become a "noble fellow, who, rather than have his family name tainted by being connected with a criminal trial, is willing to risk even conviction" —"a veteran of the glorious war which knocked the shackles from the slave"—"the father of nine children"—"a man hounded by the police." The district attorney may shout himself hoarse, the judge may pound his gavel in righteous indignation, the lawyer may apologize because in the zeal with which he feels inspired for his client's cause he perhaps (which only makes matters worse) has *overstepped the mark*—but some juryman may suppose that, after all, the prisoner *is* a hero or nine times a father.

There is one notorious attorney who poses as a philanthropist and who invariably promises the jury that if they acquit his client he will personally give him employment. If he has kept half of his promises he must by this time have several hundred clerks, gardeners, coachmen, choremen and valets.

In like manner attorneys of this feather will deliberately state to the jury that *if* the defendant had taken the stand he *would have* testified thus and so; or that if certain witnesses who have not appeared (and who perhaps in reality do not exist at all) *had* testified they would have established various facts. Such lawyers should be locked up or disbarred; courts are powerless to negative entirely their dishonesty in individual cases.

Clever counsel, of course, habitually make use of all sorts of appeals to sympathy and prejudice. In one case in New York in which James W. Osborne appeared as prosecutor the defendant wore a G. A. R. button. His lawyer managed to get a veteran on the jury. Mr. Osborne is a native of North Carolina. The defendant's counsel, to use his own words, "worked the war for all it was worth," and the defendant lived, bled and died for his country and over and over again. In summing up the case, the attorney addressed himself particularly to the veteran on the back row, and, after referring to numerous imaginary engagements, exclaimed: "Why, gentlemen, my client was pouring out his life blood upon the field of battle when the ancestors of Mr. Osborne were raising their hands against the flag!" For once Mr. Osborne had no adequate words to reply.

By far the most effective and dangerous "trick" employed by guilty defendants is the deliberate shouldering of the entire blame by one of two persons who are indicted together for a single offence. A common example of this is where two men are caught at the same time bearing away between them the spoil of their crime and are jointly indicted for "criminally receiving stolen property." Both, probably, are "side partners," equally guilty, and have burglarized some house or store in each other's company. They may be old pals and often have served time together. They agree to demand separate trials, and that whoever is convicted first shall assume the entire responsibility. Accordingly, A. is tried and, in spite of his asseveration that he is innocent and that the "stuff" was given him by a strange man, who paid him a dollar to transport it to a certain place, is properly convicted.* The bargain holds. B.'s case is moved for trial and he claims never to have seen A. in his life before the night in question, and that he volunteered to help the latter carry a bundle which seemed to be too heavy for him. He calls A., who testifies that this is so—that

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* The defence that the accused innocently received the stolen property into his possession was a familiar one even in 1697, as

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appears by the following record taken from the Minutes of the Sessions. It would seem that it was even then received with some incredulity.

CITY & COUNTY OF NEW YORK: ss:

At a Meeting of the Justices of the Peace for the said City & County at the City Hall of the said City on Thursday the 10th day of June Anno Dom 1697.

PRESENT.

William Morrott } Esquires
James Graham } quorum

Jacobus Cortlandt } Esquires
Grandt Schuylor } Justices
Leonard Lowie } of the Peace

Jacobus Cortlandt, Esq., one of his Majestys Justices of the peace for ye said City and County Informed the Kings Justices that a peace of Linnen Ticking was taken out of his Shop this Morning. That he was informed a Negro Slave Named Joe was seen to take the same whereupon the said Jacobus Van Cortlandt Pursued the said Joe and apprehended him and found the said peice of ticking in his custody and had the said Negro Joe penned in the cage, upon which the said Negro man being brought before the said Justices said he did not take the said ticking out of the Shop window but that a Boy gave itt to him, but upon Examination of Sundry other Evidence itt Manifestly Appeareth to the said Justices that the said Negro man Named Joe, did steal the said piece of linnen ticking out of the Shop Window of the said Jacobus Van Cortlandt and thereupon doe order the punishment of the said Negro as follows vigt. That the said Negro man Slave Named Joe shall be forthwith by the Common whipper of the City or some of the Sheriffs officers att the Cage be stripped Naked from the Middle upwards and then and there shall be tyed to the tayle of a Cart and being soe stripped and tyed shall be Drove Round the City and Receive upon his naked body att the Corner of each Street nine lashes until he return to the place from whence he sett out and that he afterwards Stand Committed to the Sheriffs custody till he pay his fees.

B., whom he did not know from Adam, tendered his services and that he availed himself of the offer. The jury are usually prone to acquit, as the weight of evidence is clearly with the defendant.

Many changes are rung upon this device. There is said to have been a case in which the defendant was convicted of murder in the first degree and sentenced to be executed. It was one of circumstantial evidence and the verdict was the result of hours of deliberation on the part of the jury. The prisoner had stoutly denied knowing anything of the homicide. Shortly before the date set for the execution, another man turned up who admitted that he had committed the crime and made the fullest sort of a confession. A new trial was thereupon granted by the Appellate Court, and the convict, on the application of the prosecuting attorney, was discharged and quickly made himself scarce. It then developed that apart from the prisoner's own confession there was practically nothing to connect him with the crime. Under a statute making such evidence obligatory in order to render a confession sufficient for a conviction, the prisoner had to be discharged.

In the case of Mabel Parker, a young woman of twenty, charged with the forgery of a large number of checks, many of them for substantial amounts, her husband made an almost successful attempt to procure her acquittal by means of a new variation of the old game. Mrs. Parker, after her husband had been arrested for *passing* one of the bogus checks, had been duped by a detective into believing that the latter was a fellow criminal who was interested in securing Parker's release. In due course she took this supposed friend into her confidence, made a complete confession, and illustrated her skill by impromptu copies of her forgeries from memory upon a sheet of pad paper. This the detective secured and then arrested her. She was indicted for forging the name *Alice Kauser* to a check upon the Lincoln National Bank. On her trial she denied having done so, and claimed that the detective had found the sheet containing her supposed handwriting in her husband's desk, and that she had written none of the alleged copies upon it. The door of the courtroom then opened, and James Parker was led to the bar and *pleaded guilty* to the forgery of the check in question. (For the benefit of the layman it should be explained that as a rule indictments for forgery also contain a count for "uttering.") He then took the stand, admitted that he had not only uttered but had also written the check, and swore that it was *his handwriting* which appeared on the pad.

The prosecutor was nonplussed. If he should ask the witness to prove his capacity to forge such a check from memory on the witness-stand, the latter, as he had ample time to practise the signature while in prison, would probably succeed in doing so. If, on the other hand, he should not ask him to write the name, the defendant's counsel would argue to the jury that he was *afraid* to do so. The district attorney therefore took the bull by the horns and challenged Parker to make from memory a copy of the signature, and, much as he had suspected, the witness produced a very good one. An acquittal seemed certain, and the prosecutor was at his wit's end to devise a means to meet this practical demonstration that the husband was in fact the forger. At last it was suggested to him that it would be comparatively easy to memorize such a signature, and acting on this hint he found that after half an hour's practice he was able to make almost as good a forgery as Parker. When therefore it came time for him to address the jury he pointed out the fact that Parker's performance on the witness-stand really established nothing at all—that any one could forge such a signature from memory after but a few minutes' practice.

"To prove to you how easily this can be done," said he, "I will volunteer to write a better Kauser signature than Parker did."

He thereupon seized a pen and began to demonstrate his ability to do so. Mrs. Parker, seeing the force of this ocular demonstration, grasped her counsel's arm and cried out: "For God's sake, don't let him do it!" The lawyer objected, the objection was sustained, but the case was saved. Why, the jury argued, should the lawyer object unless the making of such a forgery were in fact an easy matter?

In desperate cases, desperate men will take desperate chances. The traditional instance where the lawyer, defending a client charged with causing the death of another by administering poisoned cake, met the evidence of the prosecution's experts with the remark: "This is my answer to their testimony!" and calmly ate the balance of the cake, is too familiar to warrant detailed repetition. The jury retired to the jury-room and the lawyer to his office, where a stomach pump quickly put him out of danger. The jury is supposed to have acquitted.

Such are some of the tricks of the legal trade as practised in its criminal branch. Most of them are unsuccessful and serve only to relieve the gray monotony of the courts. When they achieve their object they add to the interest of the profession and teach the prosecutor a lesson by which, perhaps, he may profit in the future.

CHAPTER IX

What Fosters Crime

TO lack of regard for law is mainly due the existence of crime, for a perfect respect for law would involve entire obedience to it. Yet crime continues and from time to time breaks forth to such an extent as to give ground for a popular impression that it is increasing out of proportion to our growth as a nation. Now, while it may be fairly questioned whether there is any actual increase of crime in the United States, and while, on the contrary, observation would seem to show an actual decrease, not only in crimes of violence, but in all major crimes, there nevertheless exists to-day a widespread contempt for the criminal law which, if it has not already stimulated a general increase of criminal activity, is likely to do so in the future. This contempt for the law is founded not only upon actual conditions, but also upon belief in conditions erroneously supposed to exist, which is fostered by current literature and by the sensational press.

Thus, as has already been pointed out, while it is popularly believed that women are almost never convicted of crime, and particularly of homicide, the fact is, at least in New York County, that a much greater proportion of women charged with murder are convicted than of men charged with the same offence. To read the newspapers one would suppose that the mere fact that the defendant was a female instantly paralyzed the minds of the jury and reduced them to a state of imbecility. The inevitable result of this must be to encourage lawlessness among the lower orders of women and to lead them to look upon arrest as a mere formality without ultimate significance. The writer recalls trying for murder a negress who had shot her lover not long after the discharge of a notorious female defendant in a recent spectacular trial in New York. When asked why she had killed him she replied:

"Oh, Nan Patterson did it and got off."

This is not offered as a reflection upon the failure of the jury to reach a verdict in the Patterson case, but as an illuminating illustration of the concrete and immediate effect of all actual or supposed failures of justice.

A belief that the course of criminal justice is slow and uncertain, that the chances are all in favor of the defendant, and that he has but to resort to technicalities to secure not only indefinite delay but generally ultimate freedom, breeds an indifference amounting almost to arrogance among law-breakers, powerful and otherwise, and a painful yet hopeless conviction among honest men that nothing can prevent the wicked from flourishing. Honesty seems no longer even a good policy, and the young business man resorts to sharp practices to get ahead of his unscrupulous competitor. In some localities the uncertainty and delay attendant upon the execution of the law is the alleged, and maybe the actual, cause of the community crime of lynching. Even where the administration of justice is seen at its best many people who have been wronged believe that there is so little likelihood that the offender will after all be punished that the cheapest and easiest course is to let the matter drop. All this gives aid and comfort to the powers of darkness.

The widespread impression as to the uncertainty of the law is not entirely a misapprehension. "We have long since passed the period when it is possible to punish an innocent man. We are now struggling with the problem whether it is any longer possible to punish the guilty." It is a melancholy fact that at the present time "penal statutes and procedure tend more to defeat and retard the ends of justice than to protect the rights of the accused."

The subject of criminal-law reform is too extensive to be discussed here even superficially, but historically the explanation of existing conditions is simple enough. The present overgrown state of the criminal law is the direct result of our exaggerated regard for personal liberty, coupled with a wholesale adoption of the technicalities of English law invented when only such technicalities could stand between the minor offender and the barbarous punishments of a bygone age. We forget that the community is composed of individuals, and we tend to disregard its interests for those of any particular individual who happens to be a prisoner at the bar. We revolted from England and incidentally from her system of administering the criminal law, by which the defendant could have no voice at his own trial, where practically every crime was punishable with death, and where only the Crown could produce and examine witnesses. Every one will have to agree that the English system was very harsh and very unfair indeed. To-day it is better than ours, simply because its errors have been systematically and wisely corrected, without diminution in the national respect for law. When we devised our own system we adopted those humane expedients for evading the law which were only justified by the existing penalties attached to convictions for crime,—and then discarded the penalties. We were through with tyrants once and for all. The Crown had always been opposed to the defendant and the Crown was a tyrant. We naturally turned with sympathy towards the prisoner.

We gave him the right of appeal on all matters of law through all the courts of our States, and even into the courts of the United States, while we allowed the People no right of appeal at all. If the prisoner was convicted he could go on and test the case all along the line,—if he was acquitted the People had to rest satisfied. We stopped the mouth of the judge and made it illegal for him to "sum up" the case or discuss the facts to any extent. We clipped the wings of of the prosecutor and allowed him less latitude of expression than an English judge. Then we gazed on the work of our intellects and said it was good. If an ignorant jury acquitted a murderer under the eyes of a gagged and helpless judge, we said that it was all right and that it was better that ninety-nine guilty men should escape than that one innocent man should be convicted. Yes,—better for whom? If another murderer, about whose guilt the highest court in one of the States said there was no possible doubt, secured three new trials and was finally acquitted on the fourth, it merely demonstrated how perfectly we safeguarded the rights of the individual.

The result is that we have unnecessarily fettered ourselves, have furnished a multitude of technical avenues of escape to wrong-doers, and have created a popular contempt for courts of justice, which shows itself in the sentimental and careless verdicts of juries, in a lack of public spirit, and in an indisposition to prosecute wrong-doers. In addition, the impression sought to be conveyed by the yellow press that our judiciary is corrupt and that money can buy anything—even justice—leads the jury in many cases to feel that their presence is merely a formal concession to an archaic procedure and that their oaths have no real significance.

The community, the "People," have a sufficiently hard task to secure justice at any criminal trial. On the one hand is the abstract proposition that the law has been violated, on the other sits a human being, ofttimes contrite, always an object of pity. He is presumed innocent, he is to be given the benefit of every reasonable doubt. He has the right to make his own powerful appeal to the jury and to have the services of the best lawyer he can secure to sway their emotions and their sympathies. If the prosecutor resorts to eloquence he is stigmatized as "over-zealous" and as a "persecutor." If a plainly guilty defendant be acquitted, not the trampled ideal of justice, but the vision of a liberated prisoner rejoicing in his freedom hovers in the talesman's dreams.

So far so good; we can afford to stand by a system which in the long run has served us fairly well. But an occasional evil, an evil which when it occurs is productive of great harm and serves to give color to the popular opinion of criminal law, begins only when the lawyers have had their opportunity for elocution. At the conclusion of the charge the defendant's attorney proceeds to put the judge through what is familiarly known as "a course of sprouts." He makes twenty or thirty "requests to charge the jury" on the most abstract propositions of law which his fertile mind can devise,—relevant or irrelevant, applicable or inapplicable to the facts,—and the judge is compelled to decide from the bench, without opportunity for reflection, questions which the attorney has labored upon, perchance, for weeks. If he guesses wrong, the lawyer "excepts" and the case may be reversed on appeal. This is not a test of the defendant's guilt or innocence, but a test of the abstract learning and quickness of the presiding judge.

It is generally believed that appellate courts are prone to reverse criminal cases on purely technical grounds. Whether this belief be well founded or ill, its wide acceptance as fact is fertile in bringing the law into disrepute.* Justice to be effective must be not only sure but swift. An "iron hand" cannot always compensate for a "leaden heel."

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* Cf. "Criminal Law Reform," G. W. Alger, "The Outlook," June, 1907. Also article having same title in "Moral Overstrain," by same author. See also, by Hon. C. F. Amidon, "The Quest for Error and the doing of Justice," 40 American Law Rev. 681, and article on same subject in "The Outlook" for June, 1906.

It is probably true that in some of the States such a tendency exists and may result in making the administration of justice a laughing stock, but it is far from being so in States of the character of New York and Massachusetts. The Appellate Division, First Department, and Court of Appeals in New York are distinctly opposed to reversing criminal cases on technical grounds and are prone to disregard trivial error where the guilt of the defendant is clear. The writer can recall no recent criminal case where the district attorney's office has felt aggrieved at the action of the higher courts, and on the contrary believes that their action is generally based on broad principles of public policy and common-sense.

During the year 1905 the district attorney of New York County defended forty-seven appeals from convictions in criminal cases in the Appellate Division. Of these convictions only *three* were reversed. He defended eighteen in the Court of Appeals, of which only *two* were reversed. One of the writer's associates computed that he had secured, during a four years' term of office, twenty-nine convictions in which appeals had been taken. Of these but two were reversed, one of them immediately resulting in the defendant's re-conviction for the same crime. The other is still pending and the defendant awaiting his trial. Certainly there is little in the actual figures to give color to the impression that the criminal profits by mere technicalities on appeal,—at least in New York State.

In nine cases out of ten the reversal of a conviction in a criminal case is due to the carelessness or inefficiency of the prosecuting officer or trial judge and not to any inadequacy in our methods of procedure. Yet the tenth case, the case where the criminal does beat the law by a technicality, does more harm than can easily be estimated. That is the one case everybody knows about,—the one the papers descant upon, the one that cheers the heart of the grafter and every criminal who can afford to pay a lawyer.

Yet the evil influence of the reversal of a conviction on appeal, however much it is to be deprecated, is as nothing compared with a deliberate acquittal of a guilty defendant by a reckless, sentimental, or lawless jury. Few can appreciate as does a prosecutor the actual, practical and immediate effect of such a spectacle upon those who witness it.

Two men were seen to enter an empty dwelling-house in the dead of night. The alarm was given by a watchman near by, and a young police officer, who had been but seven months on the force, bravely entered the black and deserted building, searched it from roof to cellar, and found the marauders locked in one of the rooms. He called upon them to open, received no reply, yet without hesitation and without knowing what the consequences to himself might be, smashed in the door and apprehended the two men. One was found with a large bundle of skeleton keys in his pocket and several candles, while a partially consumed candle lay upon the floor. In the police court they *pleaded guilty* to a charge of burglary, and were promptly indicted by the grand jury.

At the trial they claimed to have gone into the house *to sleep,* said they had found the bunch of keys on the stairs, *denied* having the candles at all or that they were in a room on the top story, and asserted that they were in the entrance hall when arrested.

The story told by the defendants was so utterly ridiculous that one of the two could not control a grin while giving his version of it on the witness-stand. The writer, who prosecuted the case, regarded the trial as a mere formality and hardly felt that it was necessary to sum up the evidence at all.

Imagine his surprise when an intelligent-looking jury *acquitted* both the defendants after practically no deliberation. Both had offered to plead guilty to a slightly lower degree of crime before the case was moved for trial.

These two defendants, who were neither insane nor degenerates, consorted with others in Bowery hotels and saloons,—incubators of crime. What effect could such a performance have upon them and their friends save to inculcate a belief that they were licensed to commit as many burglaries as they chose? They had a practical demonstration that the law was "no good" and the system a failure. If they could beat a case in which they had already pleaded *guilty*, what could they not do where the evidence was less obvious? They were henceforth immune. Who shall say how many embryonic law-breakers took courage at the story and started upon an experimental attempt at crime?

The news of such an acquittal must instantly have been carried to the Tombs, where every other guilty prisoner took heart and prepared anew his defence. Those about to plead guilty and throw themselves upon the mercy of the court, abandoned ther honest purpose and devised some perjury instead. Criminals almost persuaded that honesty was the best policy changed their minds. The barometer of crime swung its needle from "stormy" to "fair."

But, apart from the law-breakers, consider the effect of such a miscarriage of justice upon a young, honest and zealous officer. First, all his good work, his bravery, his conscientious effort at safeguarding the sleeping public had been disregarded, tossed aside with a sneer, and had gone for naught. The jury had stamped his story as a lie and stigmatized him, by their action, as a perjurer. They had chosen two professional criminals as better men. His whole conduct of the case instead of being commended as meritorious had resulted in a solemn public declaration that he was not worthy of credence and that he had attempted wilfully to railroad to State's prison two innocent men. In other words, that he ought to be there himself. What was the use of trying to do good work any longer? He might just as well loiter in an area on a barrel and smoke a furtive cigar when he ought to be "on post." Perhaps he might better "stand in" with those who would inevitably be preferred to him by a jury of their peers.

What must have been the effect on the court officers, the witnesses, the defendants out on bail, the complainants, the spectators? That the whole business was nonsense and rot! That the jury system was ridiculous. That the jurymen were either crooks or fools. That the only people who were not insulted and sneered at were the lawbreakers themselves. That if two such rogues were to be set free all the other jailbirds might as well be let go. That an honest man could whistle for his justice and might better straightway put on his hat and go home. That the only way to punish a criminal was to punish him yourself—kill him if you got the chance or get the crowd to lynch him. That if a thief stole from you the shrewdest thing to do was to induce him as a set-off to give you the proceeds of his next thieving. That it was humiliating to live in a town where a self-confessed rascal could snap his fingers at the law and go unwhipped of justice.

The jury's action must have been due either to a wilful disregard of their oath or an entire misconception of it. Assuming that the jury deliberately declined to obey the law, the whole twelve elected to become, and thereby did become, lawbreakers. They disqualified themselves forever as talesmen. No prosecutor in his senses would move a case before a jury which numbered any one of them. They had arraigned themselves upon the side, and under the standard, of crime. They became accessories after the fact. If on the other hand they misconceived the purpose for which they were there the performance was a shocking example of what is possible under present conditions.

Just as there are three general classes of wrongs, so there are three general and varyingly effective forms of restraint against their perpetration. First there is the moral control exerted by what is ordinarily called conscience, secondly there is the restraint which arises out of the apprehension that the commission of a tort will be followed by a judgment for damages in a civil court, and lastly there is the restraint imposed by the criminal law. All these play their part, separately or in conjunction. For some men conscience is a sufficient barrier to crime or to those acts which, while equally reprehensible, are not technically criminal; for others the possibility of pecuniary loss is enough to keep them in the straight and narrow way; but for a large proportion of the community the fear of criminal prosecution, with implied disgrace and ignominy, forfeiture of citizenship, and confinement in a common jail is about the only conclusive reason for doing unto others as they would the others should do unto them. Were the criminal law done away with in our present state of civilization, religion, ethics and civil procedure would be absolutely inefficacious to prevent anarchy. It is as imperative to the ordinary citizen to know that if he steals he will be locked up as it is for the child to know that if he puts his hand into the fire it will be burned. The acquittal of every thief breeds another, and the unpunished murder is an incentive for a dozen similar homicides.

Crimes are either deliberate or the result of accident or impulse. The last class may rise to a high degree of enormity,—such as manslaughter, but these crimes are rarely possible of restraint. The perpetrator does not stop to consider, even if he be sober enough to think at all, whether his act be moral, whether it will entail any civil liability, or what will be its consequences, if it be a crime. So far as such acts are concerned those who commit them are hardly criminals in the ordinary sense, and no influence in the world is able to prevent them.

The question is how far these different kinds of restraint operate upon the community as a whole in the prevention of *deliberate* crime. Clearly the fear of pecuniary loss through actions brought to judgment in the civil courts is practically *nil*. Most persons who set out to commit crime have no bank account, the absence of one being generally what leads them into a criminal career.

The writer has no intention of attempting to discuss or estimate the efficacy of religion or ethics as restraining influences. A certain limited proportion of the community would not commit crime under any circumstances. It is enough for them that the act is forbidden by the State even if it be not really wrong from their own personal point of view. Side by side with these very good people are a very large number who wear just as fashionable clothing, have the same friends, attend the same churches, but who would commit almost any crime so long as they were sure of not being caught. If we had no criminal law we should soon discover who were the hypocrites.

But for an overwhelming majority of the community something more practical than either religion, ethics, or philosophy is necessary to keep them in order. They must be convinced that the transgressor will surely be punished,—not some time, not next year or the year after, but *now*. Not, moreover, that his way will be merely hard, but that he will be put in stripes and made to break stones.

Hence the necessity for a vigorous and adequate criminal law and procedure which shall command the respect and loyalty of the community, administered by a fearless judiciary who will hold jurors to a rigid and conscientious obedience to their oath.

There is nothing sacred about an archaic criminal procedure which in some respects is less devised for the protection of the community than for the exculpation of the guilty. The portals of liberty would not fall down or the framers of the constitution turn in their graves if the peremptory challenges allowed to both sides in the selection of a jury were reduced to a reasonable number, or if persons found guilty of crime after due process of law were compelled to stay in jail until their appeals were decided, instead of walking the streets free as air under a certificate of "reasonable doubt" issued by some judge who personally knew nothing of the actual trial of the case. As things stand to-day, a thief caught in the very act of picking a pocket in the night-time may challenge arbitrarily the twenty most intelligent talesmen called to sit as jurors in his case. Does such a practice make for justice? It is even possible that the sacred bird of liberty would not scream if eleven jurors, instead of twelve, were permitted to convict a defendant or set him free, while the question of how far the right of appeal in criminal cases might properly be limited or, in default of such limitation, how far under certain conditions it might be correspondingly extended to the community, is by no means purely academic.* It is also conceivable that some means might be found to do away with the interminable technicalities which can now be interposed on behalf of the accused to prevent trials or the infliction of sentence after conviction.

Yet these considerations are of slight moment in contrast to that most crying of all present abuses,—the domination of the court-room by the press.† It is no fiction to say that in many cases the actual trial is conducted in the columns of yellow journals and the defendant acquitted or convicted purely in accordance with an "editorial policy." Judges, jurors, and attorneys are caricatured and flouted. There is no evidence, however incompetent, improper, or prejudicial to either side, excluded by the judge in a court of criminal justice, that is not deliberately thrust under the noses of the jury in flaring letters of red or purple the moment they leave the court-room. The judge may charge one way in accordance with the law of the land, while the editor charges the same jury in double-leaded paragraphs with what "unwritten" law may best suit the owner of his conscience and his pen. "Contempt of court" in its original significance is something known to-day only to the reader of text books.*

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* "Limitation of the Right of Appeal in Criminal Cases," by Nathan A. Smythe, 17 Harvard Law Rev. 317 (1905).

† Cf. "Sensational Journalism and the Law," in "Moral Overstrain," by G. W. Alger.

Each State has its own particular problem to face, but ultimately the question is a national one. Lack of respect for law is characteristic of the American people as a whole. Until we acquire a vastly increased sense of civic duty we should not complain that crime is increasing or the law ineffective. It would be a most excellent thing for an association of our leading citizens to interest itself in criminal-law reform and demand and secure the passage of new and effective legislation, but it would accomplish little if its individual members continued to evade jury service and left their most important duty to those least qualified by education or experience to perform.* It would serve some of this class of reformers right, if one day, when after a life-time of evasion, they perchance came to be tried by a jury of their peers, they should find that among their twelve judges there was not one who could read or write the English language with accuracy and that all were ready to convict anybody because he lived in a brown-stone front.

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* By the New York Penal Code § 143, an editor is only guilty of contempt of court (a misdemeanor) if he publishes "a false or grossly inaccurate report" of its proceedings. The most insidious, dangerous, offensive and prejudicial matter spread broadcast by the daily press does not relate to actual trials at all, but to matters entirely outside the record, such as what certain witnesses of either side could establish were they available, the "real" past and character of the defendant, etc. The New York Courts, under the present statute, are powerless to prevent this abuse. In Massachusetts half a dozen of our principal editors and "special writers" would have been locked up long ago to the betterment of the community and to the increase of respect for our courts of justice.

Merchants, who in return for a larger possible restitution habitually compound felonies by tacitly agreeing not to prosecute those who have defrauded them, have no right to complain because juries acquit the offenders whom they finally decide it to be worth their while to pursue. The voter who has not the courage to insist that hypocritical laws should be wiped from the statute books should express no surprise when juries refuse to convict those who violate them. The man who perjures himself to escape his taxes has no right to expect that his fellow citizens are going to place a higher value upon an oath than he.

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* "The Citizen and the Jury," in "Moral Overstrain," by G. W. Alger.

CHAPTER X

Insanity and the Law

HARRY KENDALL THAW shot and killed Stanford White on the 25th day of June, 1905. Although most of the Coroner's jury which first sat upon the case considered him irrational, he was committed to the Tombs and, having been indicted for murder, remained there over six months pending his trial. During that time it was a matter of common knowledge that his defence was to be that he was insane at the time of the shooting, but as under the New York law it is not necessary specifically to enter a plea of insanity to the indictment in order to take advantage of that defence (which may be proven under the general plea of "not guilty"), there was nothing officially on record to indicate this purpose. Neither was it possible for the District Attorney to secure any evidence of Thaw's mental condition, since he positively refused either to talk to the prosecutor's medical representatives or to allow himself to be examined by them. Mr. Jerome therefore was compelled to enter upon an elaborate and expensive preparation of the case, not only upon its merits, but upon the possible question of the criminal irresponsibility of the defendant.

The case was moved in January, 1906, and the defence thereupon proceeded to introduce a limited amount of testimony tending to show that Thaw was insane when he did the shooting. While much of this evidence commended itself but little to either the prosecutor or the jury, it was sufficient to raise grave doubt as to whether the accused was a fit subject for trial. The District Attorney's experts united in the opinion that, while he knew that he was doing wrong when he shot White, he was, nevertheless, the victim of a hopeless progressive form of insanity called *dementia præcox.* In the midst of the trial, therefore, Mr. Jerome moved for a commission to examine into the question of how far Thaw was capable of understanding the nature of the proceedings against him and consulting with counsel, and frankly expressed his personal opinion in open court that Thaw was no more a proper subject for trial than a baby. A commission was appointed which reported the prisoner was sane enough to be tried, and the case then proceeded at great length with the surprising result that, in spite of the District Attorney's earlier declaration that he believed Thaw to be insane, the jury disagreed as to his criminal responsibility, a substantial number voting for conviction. Of course, logically, they would have been obliged either to acquit entirely on the ground of insanity or convict of murder in the first degree, but several voted for murder in the second degree.

A year now elapsed, during which equally elaborate preparations were made for a second trial. The State had already spent some $25,000, and yet its experts had never had the slightest opportunity to examine or interrogate the defendant, for the latter had not taken the stand at the first trial. The District Attorney still remained on record as having declared Thaw to be insane, and his own experts were committed to the same proposition, yet his official duty compelled him to prosecute the defendant a second time. The first prosecution had occupied months and delayed the trial of hundreds of other prisoners, and the next bid fair to the do same. But at this second trial the defence introduced enough testimony within two days to satisfy the public at large of the unbalanced mental condition of the defendant from boyhood.

After a comparatively short period of deliberation the jury acquitted the prisoner "on the ground of insanity," which may have meant either one of two things: (*a*) that they had a reasonable doubt in their own minds that Thew knew that he was doing wrong when he committed the mur-

A scene in the criminal court in White Plains. In this photograph Harry K. Thaw appears as the central figure

der—something hard for the layman to believe, or (*b*) that, realizing that he was undoubtedly the victim of mental disease, they refused to follow the strict legal test.

Nearly two years had elapsed since the homicide; over a hundred thousand dollars had been spent upon the case; every corner of the community had been deluged with detailed accounts of unspeakable filth and depravity; the moral tone of society had been depressed; and the only element which had profited by this whole lamentable and unnecessary proceeding had been the sensational press. Yet the sole reason for it all was that the law of the land in respect to insane persons accused of crime was hopelessly out of date.

The question of how far persons who are victims of diseased mind shall be held criminally responsible for their acts has vexed judges, jurors, doctors, and lawyers for the last hundred years. During that time, in spite of the fact that the law has lagged far behind science in the march of progress, we have blundered along expecting our juries to reach substantial justice by dealing with each individual accused as most appeals to their enlightened common sense.

And the fact that they have obeyed their common sense rather than the law is the only reason why our present antiquated and unsatisfactory test of who shall be and who shall not be held "responsible" in the eyes of the law remains untouched upon the statute-books. Because its inadequacy is so apparent, and because no experienced person seriously expects juries to apply it consistently, it fairly deserves first place in any discussion of present problems.

Thanks to human sympathy, the law governing insanity has had comparatively few victims, but the fact remains that more than one irresponsible insane man has swung miserably from the scaffold. But "hard cases" do more than "make bad law," they make lawlessness. A statute systematically violated is worse than no statute at all, and exactly in so far as we secure a sort of justice by evading the law as it stands, we make a laughing-stock of our procedure.

The law is, simply, that any person is to be held criminally responsible for a deed unless he was at the time laboring under such a defect of reason as not to know the nature and quality of his act and that it was wrong.

This doctrine first took concrete form in 1843, when, after a person named McNaughten, who had shot and killed a certain Mr. Drummond under an insane delusion that the latter was Sir Robert Peel, had been acquitted, there was such popular uneasiness over the question of what constituted criminal responsibility that the House of

Lords submitted four questions to the fifteen judges of England asking for an opinion on the law governing responsibility for offences committed by persons afflicted with *certain forms* of insanity. It is unnecessary to set forth at length these questions, but it is enough to say that the judges formulated the foregoing rule as containing the issue which should be submitted to the jury in such cases.*

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* The questions propounded to the judges and their answers are here given:

Question 1.—"What is the law respecting alleged crimes committed by persons *afflicted with insane delusion in respect of one or more particular subjects or persons,* as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

Answer 1.—"Assuming that your lordships' inquiries are confined to those persons who labor *under such partial delusions only, and are not in other respects insane,* we are of opinion that, notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is, nevertheless, punishable, according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

Question 4.—"If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

Answer 4.—"The answer must of course depend on the nature of the delusion; but, making the same assumption as we did before, namely, that he labors under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusions exist were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and kills the man, as he supposes in self-defence, he would

Now, with that commendable reverence for judicial utterance which is so characteristic of the English nation, and is so conspicuously absent in our own country, it was assumed until recently that this solemn pronunciamento was the last word on the question of criminal responsibility and settled the matter once and forever. Barristers and legislators did not trouble themselves particularly over the fact that in 1843 the study of mental disease was in its infancy, and judges, including those of England, probably knew even less about the subject than they do now. In 1843 it was supposed that insanity, save of the sort that was obviously maniacal, necessitated "delusions," and

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be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Question 2.—"What are the proper questions to be submitted to the jury when a person, afflicted with insane delusions respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for instance), and insanity is set up as a defence?

Question 3.—"In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?

Answers 2 *and* 3.—"As these two questions appear to us to be more conveniently answered together, we submit our opinion to be that the jurors ought to be told, in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." (The remainder of the answer goes on to discuss the usual way the question is put to the jury.)

unless a man had these delusions no one regarded him as insane. In the words of a certain well-known judge:

> "The true criterion, the true test of the absence or presence of insanity, I take to be the absence or presence of what, used in a certain sense of it, is comprisable in a single term, namely, delusion. . . . In short, I look on delusion . . . and insanity to be almost, if not altogether, convertible terms." *

This in a certain broad sense, probably not intended by the judge who made the statement, is nearly true, but, unfortunately, is not entirely so.

The dense ignorance surrounding mental disease and the barbarous treatment of the insane within a century are facts familiar to everybody. Lunatics were supposed to be afflicted with demons or devils which took possession of them as retribution for their sins, and in addition to the hopelessly or maniacally insane, medical science recognized only a so-called "partial" or delusionary insanity. To-day it would be regarded about as comprehensive to relate all mental diseases to the old-fashioned "delusion" as to regard as insane only those who frothed at the mouth.

But the particular individual out of whose case in 1843 arose the rule that is in 1908 applied to all defendants indiscriminately was the victim of a clearly defined insane delusion, and the four questions answered by the judges of England relate

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* Dew *vs.* Clark.

only to persons who are *"afflicted with insane delusions in respect to one or more particular subjects or persons."* Nothing is said about insane persons *without* delusions, or about persons with *general* delusions, and the judges limit their answers even further by making them apply "to those persons who labor under such partial delusion only *and are not in other respects insane"*—a medical impossibility.

Modern authorities agree that a man cannot have insane delusions and not be in other respects insane, for it is mental derangement which is the cause of the delusion.

In the first place, therefore, a fundamental conception of the judges in answering the questions was probably fallacious, and in the second, although the test they offered was distinctly limited to persons *"afflicted with insane delusions,"* it has ever since been applied to all insane persons irrespective of their symptoms.

Finally, whether the judges knew anything about insanity or not, and whether in their answers they weighed their words very carefully or not, the test *as they laid it down* is by no means clear from a medical or even legal point of view.

Was the accused laboring under such a defect of reason as not to *know* the nature and quality of the act he was doing, or not to *know* that it was wrong? What did these judges mean by *know?*

What does the reader mean by *know?* What does the ordinary juryman mean by it?

We are left in doubt as to whether the word should be given, as Justice Stephens contended it should be, a very broad and liberal interpretation such as "able to judge calmly and reasonably of the moral or legal character of a proposed action," * or a limited and qualified one. There are all grades and degrees of "knowledge," and it is more than probable that there is a state of mind which I have heard an astute expert call upon the witness stand "an insane knowledge," and equally obvious that there may be "imperfect" or "incomplete knowledge," where the victim sees "through a glass darkly." Certainly it seems far from fair to interpret the test of responsibility to cover a condition where the accused may have had a hazy or dream-like realization that his act was technically contrary to the law, and even more dangerous to make it exclude one who was simply unable to "judge calmly and reasonably" of his proposed action, a doctrine which could almost be invoked by any one who committed homicide in a state of anger.

Ordinarily the word is not defined at all and the befuddled juryman is left to his own devices in determining what significance he shall attach not only to this word but to the test as a whole.

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* "General View of the Criminal Law," p. 80.

An equally ambiguous term is the word "wrong." The judges made no attempt to define it in 1843, and it has been variously interpreted ever since. Now it may mean "contrary to the dictates of conscience" *or*, as it is usually construed, "contrary to the law of the land"—and exactly *what* it means may make a great difference to the accused on trial. If the defendant thinks that God has directed him to kill a wicked man, he may know that such an act will not only be contrary to law, but also in opposition to the moral sense of the community as a whole, and yet he may believe that it is his conscientious duty to take life. In the case of Hadfield, who deliberately fired at George III in order to be hung, the defendant believed himself to be the Lord Jesus Christ, and that only by so doing could the world be saved. Applying the legal test and translating the word "wrong" as contrary to the common morality of the community wherein he resided or contrary to law, Hadfield ought to have achieved his object and been given death upon the scaffold instead of being clapped, as he was, into a lunatic asylum.

On the other hand, if the word "wrong" is judicially interpreted," it would seem to be given an elasticity which would invite inevitable confusion as well as abuse.

Moreover, the test in question takes no cognizance of persons who have no power of control. The law of New York and most of the states does not recognize "irresistible impulses," but it should admit the medical fact that there are persons who, through no fault of their own, are born practically without any inhibitory capacity whatever, and that there are others whose control has been so weakened, through accident or disease, as to render them morally irresponsible,—the so-called psychopathic inferiors.

Most of us are only too familiar with the state of a person just falling under the influence of an anesthetic, when all the senses seem supernaturally acute, the reasoning powers are active and unimpaired, and the patient is convinced that he can do as he wills, whereas, in reality, he says and does things which later on seem impossible in their absurdity. Such a condition is equally possible to the victim of mental disease, where the knowledge of right and wrong has no real relevancy.

The test of irresponsibility as defined by law is hopelessly inadequate, judged by present medical knowledge. There is no longer any pretence that a perception of the nature and quality of an act or that it is wrong or right is conclusive of the actual insanity of a particular accused. In a recent murder case a distinguished alienist, testifying for the prosecution, admitted that over seventy per cent. of the patients under his treatment, all of whom he regarded as insane and irresponsible, knew what they were doing and could distinguish right from wrong.

Countless attempts have been made to reconcile this obvious anachronism with justice and modern knowledge, but always without success, and courts have wriggled hard in their efforts to make the test adequate to the particular cases which they have been trying, but only with the result of hopelessly confounding the decisions.

But, however it is construed, the test as laid down in 1843 is insufficient in 1908. Medical science has marched on with giant strides, while the law, so far as this subject is concerned, has never progressed at all. It is no longer possible to determine mental responsibility by any such artificial rule as that given by the judges to the Lords in McNaughten's case, and which juries are supposed to apply in the courts of to-day. I say "supposed," for juries do not apply it, and the reason is simple enough—you cannot expect a juryman of intelligence to follow a doctrine of law which he instinctively feels to be crude and which he knows is arbitrarily applied.

No juryman believes himself capable of successfully analyzing a prisoner's past mental condition, and he is apt to suspect that, however sincere the experts on either side may appear, their opinions may be even less definite than the terms in which they are expressed. The spectacle of an equal number of intellectual-looking gentlemen, all using good English and all wearing clean linen, reaching diametrically opposite conclusions on precisely the same facts, is calculated to fill the well-intentioned juror with distrust. Painful as it is to record the fact, juries are sometimes almost as sceptical in regard to doctors as they always are in regard to lawyers.

The usual effect of the expert testimony on one side is to neutralize that on the other, for there is no practical way for the jury to distinguish between experts, since the foolish ones generally look as learned as the wise ones. The result is hopeless confusion on the part of the juryman, an inclination to "throw it all out," and a resort to other testimony to help him out of his difficulty. Of course he has no individual way of telling whether the defendant *"knew* right from *wrong,"* whatever that may mean, and so the ultimate test that he applies is apt to be whether or not the defendant is really "queer," "nutty" or "bughouse," or some other equally intelligible equivalent for "medically insane."

The unfortunate consequence is that there is so general and growing a scepticism about the plea of insanity, entirely apart from its actual merits, that it is difficult in ordinary cases, whatever the jurors may think or say in regard to the matter, to secure twelve men who will give the defence fair consideration at the outset.

This is manifest in frequent expressions from talesmen such as: "I think the defence of insanity is played out," or "I believe everybody is a little insane, anyhow" (very popular and regarded by jurymen as witty), or "Well, I have an idea that when a fellow can't cook up any other defence he claims to be insane."

The result is a rather paradoxical situation: The attitude of the ordinary jury in a homicide case, where the defence of insanity is interposed, is usually at the outset one of distrust, and their impulse is to brush the claim aside. This tendency is strengthened by the legal presumption, which the prosecutor invariably calls to their attention, that the defendant is sane. Every expert who has testified for the defence in the ordinary "knock down and drag out" homicide case must have felt with the prisoner's attorneys, that it was "up to them" not so much to create a *doubt* of the defendant's sanity as to *prove* that he was insane, if they expected consideration from the jury.

Now let us assume that the defence is meritorious and that the prisoner's experts have created a favorable impression. Let us go even further and assume that they have generated a reasonable doubt in the mind of the jury as to the defendant's responsibility at the time he committed the offence. What generally occurs? Not, as one would suppose, an *acquittal,* but, in nine cases out of ten, a *conviction* in a lower degree.

The only usual result of an honest claim of irresponsibility on the ground of insanity is to lead the jury to reduce the grade of the offence from murder in the first, entailing the death penalty, to murder in the second degree. The jury have no intention of "taking the chance" involved in turning the man loose on the community and their minds are filled with the predominating fact that a human being has been killed. They have an idea that it is as easy to get "sworn out" of a lunatic asylum as they suppose it is to get "sworn into" one, and they know that if the prisoner is found to be insane when sent to State's prison he will be transferred elsewhere. They, therefore, as a rule, waste little time upon the question of how far the defendant was irresponsible within the legal definition when he committed the deed, but convict him "on general principles," trusting the prison officials to remedy any possible injustice. The jury in such cases ignore the law and decline either to acquit *or* to convict in accordance with the test. Their action becomes rather that of a lay commission condemning the prisoner to hard labor for life on the ground that he is medically insane.

Assuming that the jury take the defence seriously, there is only one class of cases where, in the writer's opinion, they follow the legal test as laid down by the court—that is to say, in cases of extreme brutality. Here they hold the prisoner to the letter of the law, and the more abhorrent the crime (even where its nature might indicate to a physician that the accused was the victim of some sort of mania) the less likely they are to acquit. The writer has prosecuted perhaps a dozen homicide and other cases where the defence was insanity. In his own experience he has known of no acquittal. In several instances the defendants were undoubtedly insane, but, strictly speaking, probably vaguely knew the nature and quality of their acts and that they were wrong. In a few of these the juries convicted of murder in the first degree because the circumstances surrounding the homicides were so brutal that the harshness of the technical doctrine they were required to apply was overshadowed in their minds by their horror of the act itself. In other cases, where either the accused appeared obviously abnormal as he sat at the bar of justice, or the details of the crime were less abhorrent, they convicted of murder in the second degree in accordance with the reasoning set forth in the foregoing paragraph. The writer seriously advances the suggestion that the more the brutality of a homicide indicates mental derangement the less chance the defendant has to secure an acquittal upon the plea of insanity.

And this leads us to that increasingly large body of cases where the usual scepticism of the jury in regard to such defences is counterbalanced by some real or imaginary element of sympathy. In cities like New York, where the jury system is seen at its very best, where the statistics show seventy per cent. of convictions by verdict for the year 1907, and where the sentiment of the community is against the invocation of any law supposedly higher than that of the State, our talesmen are unwilling to condone homicide or to act as self-constituted pardoning bodies, for they know that an obviously lawless verdict will bring down upon them the censure of the public and the press. This is perhaps demonstrated by the fact that in New York County a higher percentage of women are convicted of homicide than of men.

But the plea of insanity, with its vague test of responsibility, whose terms the juryman may construe for himself (or which his fellow-jurors may construe for him) offers an unlimited and fertile field for the "reasonable" doubt and an easy excuse for the conscientious talesman who wants to acquit if he can. Juries take the little stock in irresistible impulses and emotional or temporary insanity save as a cloak to cover an unrighteous acquittal.

In no other class of cases does "luck" play so large a part in the final disposition of the prisoner. A jury is quite as likely to send an insane man to the electric chair as to acquit a defendant who is fully responsible for his crime.

To recapitulate from the writer's experience:

(1) The ordinary juror tends to be sceptical as to the good faith of the defence of insanity.

(2) When once this distrust is removed by honest evidence on the part of the defence, he usually declines to follow the legal test as laid down by the court on the general theory that any one but an idiot or a maniac has some knowledge of what he is doing and whether it is right or wrong.

(3) He applies the strict legal test only in cases of extreme brutality.

(4) In all other cases he follows the medical rather than the legal test, but instead of acquitting the accused on account of his medical irresponsibility, merely convicts in a lower degree.

The following deductions may also fairly be made from observation:

(1) That the present legal test for criminal responsibility is admittedly vague and inadequate, affording great opportunity for divergent expert testimony and a readily availed of excuse for the arbitrary and sentimental actions of juries, to which is largely due the distrust prevailing of the

claim of insanity when interposed as a defence to crime.

(2) That expert medical testimony in such cases is largely discounted by the layman.

(3) That in no class of cases are the verdicts of jurors so apt to be influenced solely by emotion and prejudice, or to be guided less by the law as laid down by the court.

(4) That a new definition of criminal responsibility is necessary, based upon present knowledge of mental disease and its causes.

(5) Lastly, that, as whatever definition may be adopted will inevitably be difficult of application by an untutored lay jury, our procedure should be so amended that they may be relieved wherever possible of a task sufficiently difficult for even the most experienced and expert alienists.

A classification of the different forms of insanity, based upon its causes to which the case of any particular accused might be relegated, such as has recently been urged by a distinguished young neurologist, would not, with a few exceptions, assist us in determining his responsibility. It would be easy to say then, as now, that lunatics or maniacs should not be held responsible for their acts, but we should be left where we are at present in regard to all those shadowy cases where the accused had insane, incomplete or imperfect knowledge of what he was doing. It would be ridiculous, for example, to lay down a general rule that no person suffering from hysterical insanity should be punished for his acts. Yet, even so, such a classification would instantly remedy that anachronism in our present law which refuses to recognize as irresponsible those born without power to control their emotions—the psychopathic inferiors of science, and the real victims of *dementia præcox*.

Of course, if the insanity under which the defendant labors bears no relation to or connection with the deed for which he is on trial, there would logically be no reason why his insanity on other subjects should be any defence to his crime. For example, there is the well-known case of the Harvard professor who was apparently sane on all other matters, yet believed himself to be possessed of glass legs. Had this man in wanton anger struck and killed another, his "glass leg" delusion could not logically have availed him. If, however, he had struck and killed one who he believed was going to shatter his legs it might have been important. The illustration is clear enough, but its application probably involves a mistaken premise. If he thought he had glass legs his mind was undoubtedly deranged—whether enough or not enough to constitute him irresponsible or beyond the effect of penal discipline might be a difficult question. The generally accepted doctrine is, that if a man has a delusion concerning something, which if *actually existing* as he believed it to be would be *no excuse* for his committing the criminal act, he is responsible and liable to punishment; but, as Bishop well says:

> "This branch of the doctrine should be cautiously received; for delusion of any kind is strongly indicative of a generally diseased mind."

The new test to determine responsibility will recognize, as does the law of Germany, that there can be no criminal act where the free determination of the will is excluded by disease, and that the capacity to distinguish between right and wrong is inconclusive. It may perhaps have to take a general form, leaving it to a lay, or a mixed lay-and-expert jury to say merely whether the accused had a disease of the mind of a type recognized by science, and whether the alleged criminal act was of such a character as would naturally flow from that type of insanity, in which case it would seem obviously just to regard the defendant as partially irresponsible, and perhaps entirely so. Possibly the practical needs of the moment might be met by permitting such a jury to determine whether the defendant had *such* a knowledge of the wrongful nature and consequences of his act and such a control over his will as to be a proper subject of punishment.* This would require the jury to find that the defendant had some knowledge of right and wrong and the power to choose between them. In any event, to render the accused entirely irresponsible, his act should arise out of and be caused solely by the diseased condition of his mind. The law, while asserting the responsibility of many insane people, should recognize "partial" responsibility as well.

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* See State *vs.* Richards, 1873, Conn.

The reader may feel that little after all would be gained, but he will observe that at any rate such a test, however imperfect, would permit juries to do lawfully that which they now do by violating their oaths. The writer believes that the best concrete test yet formulated and applied by any court is that laid down in Parsons *vs.* The State of Alabama (81 Ala., 577):

> "1. Was the defendant at the time of the commission of the alleged crime, as matter of fact, afflicted with a disease of the mind, so as to be either idiotic, or otherwise insane?
>
> "2. If such be the case, did he know right from wrong as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible.
>
> "3. If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions concur:
>
> "(1) If, by reason of the duress of such mental disease, he had so far lost the power to choose between the right and wrong, and to avoid doing the act in

> question, as that his free agency was at the time destroyed.
>
> "(2) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely."

But whatever modification in the present test of criminal responsibility is adopted, there must come an equally, if not even more important, reform in the procedure in insanity cases, which to-day is as cumbersome and out of date as the law itself. As things stand now in New York and most other jurisdictions there are no adequate means open to the State to find out the actual present or past mental condition of the defendant until the trial itself, and ofttimes not even then.

In New York, in cases like Thaw's, the accused, while fully intending to interpose the defence of insanity (which he is now permitted to do simply under the general plea of "not guilty") may not only conceal the fact until the trial, but may likewise successfully block every effort of the authorities to examine him and find out his present mental condition. He may thus keep it out of the power of the District Attorney to secure the facts upon which to move for a commission to determine whether or not he ought to be in an insane asylum or is a fit subject for trial, and at the same time prevent the prosecutor from obtaining any evidence through direct medical observation by which to meet the claim, which may be "sprung" suddenly upon him later at the trial, that the defendant was irresponsible.

In order that this may be clearly understood by the reader he should fully appreciate the distinction between (1) the claim on the part of an accused that he is at present insane, and for that reason should not be either tried or punished for his alleged offence, and (2) the defence that he was (irrespective of his *present* mental condition) insane within the legal definition of irresponsibility at the time he committed it. No person who is incapable of understanding the nature of the proceedings against him or of consulting with counsel and preparing his defence can be placed on trial at all, or, if already on trial, can continue to be tried, and if a defendant "appears to the court to be insane," the judge may appoint a commission to examine him and report as to his present condition. This may be done upon the application either of the State of the accused through his counsel.

It was such a commission to determine the accused's present mental condition that District Attorney Jerome, upon the basis of the evidence introduced by the defence, applied for and secured during the first trial of Harry K. Thaw. The commission reported that Thaw was sane enough to be tried and the court then proceeded with the original case for the purpose of allowing the jury to say whether he knew the nature and quality of his act and that it was wrong when he shot and killed White.

This was a totally distinct proceeding from the interposition of the DEFENCE that the accused was irresponsible *when he committed the crime* charged against him and was not inconsistent with it.

Now supposing that the Commission had reported that Thaw *was* insane at the time of examination and not a fit subject for trial, but, on the contrary, ought to be confined in an insane asylum, the District Attorney would have spent some twenty odd thousand dollars and a year's time of one or more of his assistants in fruitless preparation. Yet, as the law stands on the books to-day in New York, there is no adequate way for the prosecution to find out whether this enormous expenditure of time or money is necessary or not, for it cannot compel the defendant to submit either to a physical or mental examination. To do so has been held to be a violation of his constitutional rights and equivalent to compelling him to give evidence against himself.

Thus when Thaw came to the bar at his first trial the State had never had any opportunity, through an examination by its physicians, to learn what his present condition was or past mental condition had been. The accused, on the other hand, had had over six months to prepare his defence and had fully availed himself of the time to submit to the most exhaustive examinations on the part of his own experts. The defendant's physicians came to court brimming with facts to which they could testify; while the State's experts had only the barren opportunity for determining the defendant's condition afforded by observing him daily in the court room and hearing what Thaw's own doctors claimed that they had discovered. There was no chance to rebut anything which the latter alleged that they had observed, and their testimony, save in so far as it was inconsistent or contradictory in itself, remained irrefutable.

There is probably no procedure which would be held constitutional whereby a compulsory examination of the accused could be had upon the mere application of the prosecuting authorities; but as a commission may generally be appointed at any time after an accused has been indicted if he "appears" to the court to be "insane," and as it is usually within the power of the District Attorney where such is the case to bring sufficient evidence of it to the attention of the court before the prisoner is brought to trial, little time is actually lost and justice is rarely defeated except in those cases (such as Thaw's) where an attempt is to be made to prove the accused insane *at the time of the alleged crime* although *sane* at the time of trial. Even here it would be the simplest thing in the world to remedy the difficulty and the proper legal steps in all jurisdictions should be taken immediately.

The two chief objects of such reforms should be, first, to relieve the ordinary jury in as many cases as possible from the necessity of passing upon the delicate issue of a defendant's mental condition at a previous time, and second, where this may not be avoided, to make their task as easy as possible by providing (*a*) a more scientific and definite test of legal responsibility and (*b*) an opportunity for adequate examination of defendants availing themselves of this defence.

This last and most practical reform can be easily secured by a slight alteration in the New York Code of Criminal Procedure, which already provides both for the entering of the specific plea of insanity and for the introduction of the defence and the proof of insanity under the general plea of "not guilty." At present the defendant has his choice of openly announcing or of concealing until the trial his intention of claiming that he was insane and so irresponsible for his crime. This is an advantage the results of which were probably not fully contemplated by the Legislature, and one to which an accused has no fair claim.

Fortunately, in the same section of the Code (658), which provides that the court may appoint a Commission to inquire into the sanity of a defendant at the time of his trial, there exists another provision, hitherto little noticed, that

"When a defendant PLEADS INSANITY, as prescribed in Section 336, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons to examine him and report to the court as to his insanity *at the time of the commission of the crime*."

If a defendant intends to prove himself irresponsible for his offence, why should he not be compelled to enter a specific plea to that effect? Once he has entered that plea, the law as it stands just quoted will do the rest. No reason has been brought to the attention of the writer why the admission of any evidence upon the defendant's trial tending to show that he was mentally irresponsible at the time of committing the crime should not be made contingent upon the defence of insanity having been *specifically pleaded* either at the time of his arraignment or later by substitution for or in conjunction with the plea of "not guilty." This would deprive him of no constitutional right whatever. There is no legal necessity of permitting an accused to prove insanity under a general answer of "not guilty." Then upon his own plea *that he had been insane* he could instantly be committed to some place of observation where a permanent medical board of inquiry could be given full opportunity to examine him and study his case with a view to determining his present and past mental condition. He would still have in prospect his regular jury trial, but if this board found him at the present time insane, the court could immediately commit him to an asylum pending recovery, precisely as under the present procedure, while if they found him sane at the present time, but reported that, in their opinion (whatever test, "medical" or "legal," they might have applied), he was *irresponsible at the time he committed the crime,* it is unlikely that any prosecutor would bring him to trial. If, however, they reported *that he was not only sane, but had been sane* at the time of his crime, it is probable that any proposed defence of insanity would be abandoned, while if it was still urged by the accused, the opinion of such a board would carry far greater weight at the ultimate trial of the case than the individual opinions of experts retained and paid by either side for that particular occasion only, and having had only a comparatively limited opportunity for examination. At any rate, if the court called in the services of such a board of medical judges to assist as *amici curiæ* in determining the defendant's condition, while their opinion would not be conclusive upon the jury, it would at least do away with the present lamentable necessity of learned men answering "yes" or "no" to a hypothetical question fifty thousand words long, when the most superficial personal examination of the accused would settle the matter definitely in their minds. Such a procedure is in general use in Germany and other continental countries, and is likewise substantially followed in Massachusetts, Maine, Vermont, and New Hampshire.*

There is good reason to hope that we may soon see in all the states adequate provision for preliminary examination upon the plea of insanity, and a new test of criminal responsibility consistent with humanity and modern medical knowledge. Even then, although murderers who indulge in popular crime will probably be acquitted on the ground of insanity, we shall at least be spared the melancholy spectacle of juries arbitrarily committing feeble-minded persons charged with homicide to imprisonment at hard labor for life, and in a large measure do away with the present unedifying exhibition of two groups of hostile experts, each interpreting an archaic and inadequate test of criminal responsibility in his own particular way, and each conscientiously able to reach a diametrically opposite conclusion upon precisely the same facts.

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* Another equally efficacious means of dealing with the matter would be to substitute, upon a defendant's plea of insanity, a full jury of experts—like any "special" jury—for the ordinary petit jury.

CHAPTER XI

The Mala Vita in America

THERE are a million and a half of Italians in the United States, of whom nearly six hundred thousand reside in New York City—more than in Rome itself. Naples alone of all the cities of Italy has so large an Italian population; while Boston has one hundred thousand, Philadelphia one hundred thousand, San Francisco seventy thousand, New Orleans seventy thousand, Chicago sixty thousand, Denver twenty-five thousand, Pittsburg twenty-five thousand, Baltimore twenty thousand, and there are extensive colonies, often numbering as many as ten thousand, in several other cities.

So vast a foreign-born population is bound to contain elements of both strength and weakness. The north Italians are *molto simpatici* to the American character, and many of their national traits are singularly like our own, for they are honest, thrifty, industrious, law-abiding and good-natured. The Italians from the extreme south of the peninsula have fewer of these qualities, and are apt to be ignorant, lazy, destitute, and superstitious. A considerable percentage, especially of those from the cities, are criminal. Even for a long time after landing in America, the Calabrians and Sicilians often exhibit a lack of enlightenment more characteristic of the Middle Ages than of the twentieth century.

At home they have lived in a tumble-down stone hut about fifteen feet square, half open to the sky (its only saving quality); in one corner the entire family sleeping in a promiscuous pile on a bed of leaves; in another a domestic zoo consisting of half a dozen hens, a cock, a goat, and a donkey. They neither read, think, nor exchange ideas. The sight of a uniform means to them either a tax-gatherer, a compulsory enlistment in the army, or an arrest, and at its appearance the man will run and the wife and children turn into stone. They are stubborn and distrustful. They are the same as they were a thousand or more years gone by.

When the writer was acting as an assistant prosecutor in New York County, a young Italian, barely twenty years of age, was brought to the bar charged with assault with intent to kill. The complainant was a withered Sicilian woman who claimed to be his wife. Both spoke an almost unintelligible dialect. The case on its face was simple enough. An officer testified that on a Sunday morning in Mulberry Bend Park, at a distance of about fifty feet from where he was standing, he saw the defendant, who had been walking peaceably with the complaining witness, suddenly draw a long and deadly looking knife and proceed to slash her about the head and arms. It had taken the officer but a moment or two to seize the defendant from behind and disarm him, but in the meantime he had inflicted some eleven wounds upon her body. No explanation had been offered for this terrible assault, and the complainant had appeared involuntarily before the Grand Jury and afterward had to be kept in the House of Detention as a hostile witness. The woman, who appeared to be about fifty years old, was sworn, and on being questioned stated that she had been married to the defendant in Sicily three years before. She declined to admit that he had attacked or harmed her in any way, constantly mumbling: "He is my husband. Do not punish him!"

The defendant, however, seemed eager to get on the stand and to tell his story; nor did the introduction of the knife in evidence or the exhibition of the woman's wounds embarrass him in the slightest degree. His manner was that of a man who had only to explain to be entirely exonerated from blame. He nodded at the jury and the judge, and scowled at the complainant, who was speedily conducted to a place where no harm could possibly come to her. When at last he was sworn, he could hardly restrain himself into coherency.

"Yes—that woman forced me to marry her!" he testified in substance. "But in the eyes of God I am not her husband, for she bewitched me! Else would I have married an old crone who could not have borne me children? When her spells weakened I left her and came to America. Here I met the woman I love,—Rosina,—and as I had been bewitched into the other marriage, we lived together as man and wife for two years. Then one day a friend told me that the old woman had followed me over the sea and was going to throw her spells upon me again. But I did not inform Rosina of these things. The next evening she told me that an old woman had been to the house and asked for me. For days my first wife lurked in the neighborhood, beseeching me to come back to her. But I told her that in the eyes of God she was not my wife. Then, in revenge, she cast the evil eye upon the child—*sul bambino*—and for six weeks it ailed and then died. Again the witch asked me to go with her, and again I refused. This time she cast her evil eye upon my wife—and Rosina grew pale and sick and took to her bed. There was only one thing to do, you understand. I resolved to slay her, just as you—*giudici*—would have done. I bought a carving-knife and sharpened it, and asked her to walk with me to the park, and I would have killed her had not the police prevented me. Wherefore, *O giudici!* I pray you to recall her and permit me to kill her or to decree that she be hung!"

This case illustrates the depths of ignorance and superstition that are occasionally to be found among Italian peasant immigrants. Another actual experience may demonstrate the mediæval treachery of which the Sicilian Mafiuso is capable, and how little his manners or ideals have progressed in the last five hundred years or so.

A photographer and his wife, both from Palermo, came to New York and rented a comfortable home with which was connected a "studio." In the course of time a young man—a Mafiuso from Palermo—was engaged as an assistant, and promptly fell in love with the photographer's wife. She was tired of her husband, and together they plotted the latter's murder. After various plans had been considered and rejected, they determined on poison, and the assistant procured enough cyanide of mercury to kill a hundred photographers, and turned it over to his mistress to administer to the victim in his "Marsala." But at the last moment her hand lost its courage and she weakly sewed the poison up for future use inside the ticking of the feather bolster on the marital bed.

This was not at all to the liking of her lover, who thereupon took matters into his own hands, by hiring another Mafiuso to remove the photographer with a knife-thrust through the heart. In order that the assassin might have a favorable opportunity to effect his object, the assistant, who posed as a devoted friend of his employer, invited the couple to a Christmas festival at his own apartment. Here they all spent an animated and friendly evening together, drinking toasts and singing Christmas carols, and toward midnight the party broke up with mutual protestations of regard. If the writer remembers accurately, the evidence was that the two men embraced and kissed each other. After a series of farewells the photographer started home. It was a clear moonlight night with the streets covered with a glistening fall of snow. The wife, singing a song, walked arm in arm with her husband until they came to a corner where a jutting wall cast a deep shadow across the sidewalk. At this point she stepped a little ahead of him, and at the same moment the hired assassin slipped up behind the victim and drove his knife into his back. The wife shrieked. The husband staggered and fell, and the "bravo" fled.

The police arrived, and so did an ambulance, which removed the hysterical wife and the transfixed victim to a hospital. Luckily the ambulance surgeon did not remove the knife, and his failure to do so saved the life of the photographer, who in consequence practically lost no blood and whose cortex was skilfully hooked up by a dextrous surgeon. In a month he was out. In another the police had caught the would-be murderer and he was soon convicted and sentenced to State prison, under a contract with the assistant to be paid two hundred and fifty dollars for each year he had to serve. Evidently the lover and his mistress concluded that the photographer bore a charmed life, for they made no further homicidal attempts.

So much for the story as an illustration of the mediæval character of some of our Sicilian immigrants. For the satisfaction of the reader's taste for the romantic and picturesque it should be added, however, that the matter did not end here. The convict, having served several years, found that the photographer's assistant was not keeping his part of the contract, as a result of which the assassin's wife and children were suffering for lack of food and clothing. He made repeated but fruitless attempts to compel the party of the first part to pay up, and finally, in despair, wrote to the District Attorney of New York County that he could, if he would, a tale unfold that would harrow up almost anybody's soul. Mr. Jerome therefore, on the gamble of getting something worth while, sent Detective Russo to Auburn to interview the prisoner. That is how the whole story came to be known. The case was put in the writer's hands, and an indictment for the very unusual crime of attempted murder (there are only one or two such cases on record in New York State) was speedily found against the photographer's assistant. At the trial the lover saw his mistress compelled to turn State's evidence against him to save herself. She testified to the Christmas carols and the cyanide of mercury.

"Did you ever remove this terrible poison from the bolster?" demanded the defendant's counsel in a sneering tone.

"No," answered the woman.

"Have you ever changed the bolster?" he persisted.

"No."

"Then it's there yet?"

"I—I think so," falteringly.

"I demand that this incredible yarn be investigated!" cried the lawyer. "I ask that the court send for the bolster and cut it open here in the presence of the jury."

The writer had no choice but to accede to this request, and the bolster was hunted down and brought into court. With some anxiety both sides watched while the lining was slit with a penknife. A few feathers fluttered to the floor as the fingers of the witness felt inside and came in contact with the poison. The assistant was convicted of attempted murder on the convict's testimony, and sentenced to Sing Sing for twenty-five years. That was the end of the second lesson.

About a month afterward the defendant's counsel made a motion for a new trial on the ground that the convict now admitted his testimony to have been wholly false, and produced an affidavit from the assassin to that effect. Naturally so startling an allegation demanded investigation. Yes, insisted the "bravo," it was all made up, a "camorra"—not a word of truth in it, and he had invented the whole thing in order to get a vacation from State prison and a free ride to New York. However, the court denied the motion. The writer procured a new indictment against the assassin—this time for perjury—and he was sentenced to another additional term in prison. What induced this sudden and extraordinary change of mind on his part can only be surmised.

These two cases are extreme examples of the mediævalism that to a considerable degree prevails in New York City, probably in Chicago and Boston, and wherever there is an excessive south Italian population.

The conditions under which a large number of Italians live in this country are favorable not only to the continuance of ignorance, but to the development of disease and crime. Naples is bad enough, no doubt. The people there are poverty-stricken and homeless. But in New York City they are worse than homeless. It is better far to sleep under the stars than in a stuffy room with ten or twelve other persons. Let the reader climb the stairs of some of the tenements in Elizabeth Street, or go through those in Union Street, Brooklyn, and he will get first-hand evidence. This is generally true of the lower class of Italians throughout the United States, whether in the city or country. They live under worse conditions than at home. You may go through the railroad camps and see twenty men sleeping together in a one-room hut of lath, tar-paper, and clay. The writer knows of one Italian laborer in Massachusetts who slept in a floorless mud hovel about six feet square, with one hole to go in and out by and another in the roof for ventilation—in order to save $1.75 per month. All honor to him! Garibaldi was of just such stuff, only he suffered in a better cause. In Naples the young folks are out all day in the sun. Here they are indoors all the year round. For the consequences of this change see Dr. Peccorini's article in the *Forum* for January, 1911, on the tuberculosis that soon develops among Italians who abroad were accustomed to live in the country but here are forced to exist in tenements.

Now, for historic reasons, these south Italians hate and distrust all governmental control and despise any appeal to the ordinary tribunals of justice to assert a right or to remedy a wrong. It has been justly said by a celebrated Italian writer that, in effect, there is some instinct for civil war in the heart of every Italian. The insufferable tyranny of the Bourbon dynasty made every outlaw dear to the hearts of the oppressed people of the Kingdom of the Two Sicilies. Even if he robbed them, they felt that he was the lesser of two evils, and sheltered him from the authorities. Out of this feeling grew the "Omertà," which paralyzes the arm of justice both in Naples and Sicily. The late Marion Crawford thus summed up the Sicilian code of honor:

> According to this code, a man who appeals to the law against his fellow man is not only a fool but a coward, and he who cannot take care of himself without the protection of the police is both. . . . It is reckoned as cowardly to betray an offender to justice, even though the offence be against one's self, as it would be not to avenge an injury by violence. It is regarded as dastardly and contemptible in a wounded man to betray the name of his assailant, because if he recovers he must naturally expect to take vengeance himself. A rhymed Sicilian proverb sums up this principle, the supposed speaker being one who has been stabbed. "If I live, I will kill thee," it says; "if I die, I forgive thee!"

Any one who has had anything to do with the administration of criminal justice in a city with a large Italian population must have found himself constantly hampered by precisely this same "Omertà." The south Italian feels obliged to conceal the name of the assassin and very likely his person, though he himself be but an accidental witness of the crime; and, while the writer knows of no instance in New York City where an innocent man has gone to prison himself rather than betray a criminal, Signor Cutera, formerly chief of police in Palermo, states that there have been many cases in Sicily where men have suffered long terms of penal servitude and even have died in prison rather than give information to the police.

In point of fact, however, the "Omertà" is not confined to Italians. It is a common attribute of all who are opposed to authority of any kind, including small boys and criminals, and with the latter arises no more from a half chivalrous loyalty to their fellows than it does from hatred of the police and a uniform desire to block their efforts (even if a personal adversary should go unpunished in consequence), fear that complaint made or assistance given to the authorities will result in vengeance being taken upon the complainant by some comrade or relative of the accused, distrust of the ability of the police to do anything anyway, disgust at the delay involved, and lastly, if not chiefly, the realization that as a witness in a court of justice the informer as a professional criminal would have little or no standing or credence, and in addition would, under cross-examination, be compelled to lay bare the secrets of his unsavory past, perhaps resulting indirectly in a term in prison for himself.* Thus may be accounted for much of the supposed "romantic, if misguided, chivalry" of the south Italian. It is common both to him and to the Bowery tough. The writer knew personally a professional crook who was twice almost shot to pieces in Chatham Square, New York City, and who persistently declined, even on his dying bed, to give a hint of the identity of his assassins, announcing that if he got well he "would attend to that little matter himself." Much of the romance surrounding crime and criminals, on examination, "fades into the light of common day"—the obvious product not of idealism, but of well-calculated self-interest.

As illustrating the backwardness of our Italian fellow-citizens in coming forward when the criminality of one of their countrymen is at stake, the last three cases of kidnapping in New York City may be mentioned.

About a year and a half ago the little boy of Dr. Scimeca, of 2 Prince Street, New York, was taken from his home. From outside sources the police heard that the child had been stolen, but, although he was receiving constant letters and telephonic communications from the kidnappers, Dr. Scimeca would not give them any information. It is known on pretty good authority that the sum of $10,000 was at first demanded as a ransom, and was lowered by degrees to $5,000, $2,500, and finally to $1,700. Dr. Scimeca at last made terms with the kidnappers, and was told to go one evening to City Park, where he is said to have handed $1,700 to a stranger. The child was found wandering aimlessly in the streets next day, after a detention of nearly three months.

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* Much more likely in Italy than in the United States.

The second case was that of Vincenzo Sabello, a grocer of 386 Broome Street, who lost his little boy on August 26, 1911. After thirty days he reported the matter to the police, but shortly after tried to throw them off the track by saying that he had been mistaken, that the boy had not been kidnapped, and that he wished no assistance. Finallv he ordered the detectives out of his place. About a month later the child was recovered, but not, according to reliable information, until Mr. Sabello had handed over $2,500.

Pending the recovery of the Sabello boy, a third child was stolen from the top floor of a house at 119 Elizabeth Street. The father, Leonardo Quartiano, reported the disappearance, and in answer to questions stated that he had received no letters or telephone messages. "Why should I?" he inquired, with uplifted hands and the most guileless demeanor. "I am poor! I am a humble fishmonger." In point of fact, Quartiano at the time had a pocketful of blackmail letters, and after four weeks paid a good ransom and got back his boy.

It is impossible to estimate correctly the number of Italian criminals in America or their influence upon our police statistics; but in several classes of crime the Italians furnish from fifteen to fifty per cent of those convicted. In murder, assault with intent to kill, blackmail, and extortion they head the list, as well as in certain other offences unnecessary to describe more fully but prevalent in Naples and the South.

Joseph Petrosino, the able and fearless officer of New York police who was murdered in Palermo while in the service of the country of his adoption, was, while he lived, our greatest guaranty of protection against the Italian criminal. But Petrosino is gone. The fear of him no longer will deter Italian ex-convicts from seeking asylum in the United States. He once told the writer that there were five thousand Italian ex-convicts in New York City alone, of whom he knew a large proportion by sight and name.* Signor Ferrero, the noted historian, is reported to have stated, on his recent visit to America, that there were thirty thousand Italian criminals in New York City. Whatever their actual number, there are quite enough at all events.

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* Petrosino is a national hero in Italy, where he was known as "Il Sherlock Holmes d'Italia"—"the Italian Sherlock Holmes." Many novels in which he figures as the central character have a wide circulation there.

By far the greater portion of these criminals, whether ex-convicts or novices, are the products or by-products of the influence of the two great secret societies of southern Italy. These societies and the unorganized criminal propensity and atmosphere which they generate, are known as the "Mala Vita."

The Mafia, a purely Sicilian product, exerts a much more obvious influence in America than the Camorra, since the Mafia is powerful all over Sicily, while the Camorra is practically confined to the city of Naples and its environs. The Sicilians in America vastly outnumber the Neapolitans. Thus in New York City for every one Camorrist you will find seven or eight Mafiusi. But they are all essentially of a piece, and the artificial distinction between them in Italy disappears entirely in America.

Historically the Mafia burst from a soil fertilized by the blood of martyred patriots, and represented the revolt of the people against all forms of the tyrannous government of the Bourbons; but the fact remains that, whatever its origin, the Mafia to-day is a criminal organization, having, like the Camorra, for its ultimate object blackmail and extortion. Its lower ranks are recruited from the scum of Palermo, who, combining extraordinary physical courage with the lowest type of viciousness, generally live by the same means that supports the East Side "cadet" in New York City, and who end either in prison or on the dissecting-table, or gradually develop into real Mafiusi and perhaps gain some influence.

It is, in addition, an ultra-successful criminal political machine, which, under cover of a pseudo-principle, deals in petty crime, wholesale blackmail, political jobbery, and the sale of elections, and may fairly be compared to the lowest types of politico-criminal clubs or societies in New York City. In Palmero it is made up of "gangs" of toughs and criminals, not unlike the Camorrist gangs of Naples, but without their organization, and is kept together by personal allegiance to some leader. Such a leader is almost always under the patronage of a "boss" in New York or a *padrone* in Italy, who uses his influence to protect the members of the gang when in legal difficulties and find them jobs when out of work and in need of funds. Thus the "boss" can rely on the gang's assistance in elections in return for favors at other times. Such gangs may act in harmony or be in open hostility or conflict with one another, but all are united as against the police, and exhibit much the same sort of "Omertà" in Chatham Square as in

Palermo. The difference between the Mafia and Camorra and the "gangs" of New York City lies in the fact that the latter are so much less numerous and powerful, and bribery and corruption so much less prevalent, that they can exert no practical influence in politics outside the Board of Aldermen, whereas the Italian societies of the Mala Vita exert an influence everywhere—in the Chamber of Deputies, the Cabinet, and even closer to the King. In fact, political corruption has been and still is of a character in Italy luckily unknown in America—not in the amounts of money paid over (which are large enough), but in the calm and matter-of-fact attitude adopted toward the subject in Parliament and elsewhere.

The overwhelming majority of Italian criminals in this country come from Sicily, Calabria, Naples, and its environs. They have lived, most of their lives, upon the ignorance, fear, and superstitions of their fellow-countrymen. They know that so long as they confine their criminal operations to Italians of the lower class they need have little terror of the law, since, if need be, their victims will harbor them from the police and perjure themselves in their defence. For the ignorant Italian brings to this country with him the same attitude toward government and the same distrust of the law that characterized him and his fellow-townsmen at home, the same Omertà that makes it so difficult to convict any Italian of a serious offence. The Italian crook is quickwitted and soon grasps the legal situation. He finds his fellow countrymen prospering, for they are generally a hard-working and thrifty lot, and he proceeds to levy tribute on them just as he did in Naples or Palermo. If they refuse his demands, stabbing or bomb-throwing show that he has lost none of his ferocity. Where they are of the most ignorant type he threatens them with the "evil eye," the "curse of God," or even with sorceries. The number of Italians who can be thus terrorized is astonishing. Of course, the mere possibility of such things argues a state of mediævalism. But mere mediævalism would be comparatively unimportant did it not supply the principal element favorable to the growth of the Mala Vita, apprehended with so much dread by many of the citizens of the United States.

Now, what are the phases of the Mala Vita—the Camorra, the Black Hand, the Mafia—which are to-day observable in the United States and which may reasonably be anticipated in the future?

In the first place, it may be safely said that of the Camorra in its historic sense—the Camorra of the ritual, of the *"Capo in Testa"* and *"Capo in Trino,"* highly organized with a self-perpetuating body of officers acting under a supreme head —there is no trace. Indeed, as has already been explained, this phase of the Camorra, save in the prisons, is practically over, even in Naples. But of the Mala Vita there is evidence enough.

Every large city, where people exist under unwholesome conditions, has some such phenomenon. In Palermo we have the traditional Mafia—a state of mind, if you will, ineradicable and all-pervasive. Naples festers with the Camorra as with a venereal disease, its whole body politic infected with it, so that its very breath is foul and its moral eyesight astigmatized. In Paris we find the Apache, abortive offspring of prostitution and brutality, the twin brother of the Camorrista. In New York there are the "gangs," composed of pimps, thugs, cheap thieves, and hangers-on of criminals, which rise and wane in power according to the honesty and efficiency of the police, and who, from time to time, hold much the same relations to police captains and inspectors as the various gangs of the Neapolitan Camorra do to commissaries and *delegati* of the "Public Safety." Corresponding to these, we have the "Black Hand" gangs among the Italian population of our largest cities. Sometimes the two coalesce, so that in the second generation we occasionally find an Italian, like Paul Kelly, leading a gang composed of other Italians, Irish-Americans, and "tough guys" of all nationalities. But the genuine Black Hander (the real Camorrist or "Mafiuoso") works alone or with two or three of his fellow-countrymen.

Curiously enough, there is a society of criminal young men in New York City who are almost the exact counterpart of the Apaches of Paris. They are known by the euphonious name of "Waps" or "Jacks." These are young Italian-Americans who allow themselves to be supported by one or two women, almost never of their own race. These pimps affect a peculiar cut of hair, and dress with half-turned-up velvet collar, not unlike the old-time Camorrist, and have manners and customs of their own. They frequent the lowest order of dance-halls, and are easily known by their picturesque styles of dancing, of which the most popular is yclept the "Nigger." They form one variety of the many "gangs" that infest the city, are as quick to flash a knife as the Apaches, and, as a cult by themselves, form an interesting sociological study.

The majority of the followers of the Mala Vita —the Black Handers—are not actually of Italian birth, but belong to the second generation. As children they avoid school, later haunt "pool" parlors and saloons, and soon become infected with a desire for "easy money," which makes them glad to follow the lead of some experienced *capo maestra*. To them he is a sort of demi-god, and they readily become his clients in crime, taking their wages in experience or whatever part of the proceeds he doles out to them. Usually the "boss" tells them nothing of the inner workings of his plots. They are merely instructed to deliver a letter or to blow up a tenement. The same name is used by the Black Hander to-day for his "assistant" or "apprentice" who actually commits a crime as that by which he was known under the Bourbons in 1820. In those early days the second-grade member of the Camorra was known as a *picciotto*. To-day the apprentice or "helper" of the Black Hander is termed a *picciott'* in the clipped dialect of the South. But the *picciotto* of New York is never raised to the grade of *Camorrista,* since the organization of the Camorra has never been transferred to this country. Instead he becomes in course of time a sort of bully or bad man on his own hook, a criminal "swell," who does no manual labor, rarely commits a crime with his own hands, and lives by his brain. Such a one was Micelli Palliozzi, arrested for the kidnapping of the Scimeca and Sabello children mentioned above—a dandy who did nothing but swagger around the Italian quarter.

Generally each *capo maestra* works for himself with his own handful of followers, who may or may not enjoy his confidence, and each gang has its own territory, held sacred by the others. The leaders all know each other, but never trespass upon the others' preserves, and rarely attempt to blackmail or terrorize any one but Italians. They gather around them associates from their own part of Italy, or the sons of men whom they have known at home. Thus for a long time Costabili was leader of the Calabrian Camorra in New York, and held undisputed sway of the territory south of Houston Street as far as Canal Street and from Broadway to the East River. On September 15, last, Costabili was caught with a bomb in his hand, and he is now doing a three-year bit up the river. *Sic transit gloria mundi!*

The Italian criminal and his American offspring have a sincere contempt for American criminal law. They are used by experience or tradition to arbitrary police methods and prosecutions unhampered by Anglo-Saxon rules of evidence. When the Italian crook is actually brought to the bar of justice at home, that he will "go" is generally a foregone conclusion. There need be no complainant in Italy. The government is the whole thing there. But, in America, if the criminal can "reach" the complaining witness or "call him off" he has nothing to worry about. This he knows he can easily do through the terror of the Camorra. And thus he knows that the chances he takes are compartively small, including that of conviction if he is ever tried by a jury of his American peers, who are loath to find a man guilty whose language and motives they are unable to understand. All this the young Camorrist is perfectly aware of and gambles on.

One of the unique phenomena of the Mala Vita in America is the class of Italians who are known as "men of honor." These are native Italians who have been convicted of crime in their own country and have either made their escape or served their terms. Some of these may have been counterfeiters at home. They come to America either as stokers, sailors, stewards, or stowaways, and, while they can not get passports, it is surprising how lax the authorities are in permitting their escape. The spirit of the Italian law is willing enough, but its fleshly enforcement is curiously weak. Those who have money enough manage to reach France or Holland and come over first or second-class. The main fact is that they get here —law or no law. Once they arrive in America, they realize their opportunities and actually start in to turn over a new leaf. They work hard; they become honest. They may have been Camorrists or Mafiusi at home, but they are so no longer. They are "on the level," and stay so; only—they are "men of honor." And what is the meaning of that? Simply that they keep their mouths, eyes, and ears shut so far as the Mala Vita is concerned. They are not against it. They might even assist it passively. Many of these erstwhile criminals pay through the nose for respectability—the Camorrist after his kind, the Mafius' after his kind. Sometimes the banker who is paying to a Camorrist is blackmailed by a Mafius'. He straightway complains to his own bad man, who goes to the "butter-in" and says in effect: "Here! What are you doing? Don't you know So-and-So is under my protection?"

"Oh!" answers the Mafius'. "Is he? Well, if that is so, I'll leave him alone—as long as he is paying for protection by somebody."

The reader will observe how the silence of "the man of honor" is not remotely associated with the Omertà. As a rule, however, the "men of honor" form a privileged and negatively righteous class, and are let strictly alone by virtue of their evil past.

The number of south Italians who now occupy positions of respectability in New York and who have criminal records on the other side would astound even their compatriots. Even several well-known business men, bankers, journalists, and others have been convicted of something or other in Italy. Occasionally they have been sent to jail; more often they have been convicted in their absence—*condannati in contumacia*—and dare not return to their native land. Sometimes the offences have been serious, others have been merely technical. At least one popular Italian banker in

New York has been convicted of murder—but the matter was arranged at home so that he treats it in a humourous vein. Two other bankers are fugitives from justice, and at least one editor.

To-day most of these men are really respectable citizens. Of course some of them are a bad lot, but they are known and avoided. Yet the fact that even the better class of Italians in New York are thoroughly familiar with the phenomena surrounding the Mala Vita is favorable to the spread of a certain amount of Camorrist activity. There are a number of influential bosses, or *capi maestra,* who are ready to undertake almost any kind of a job for from twenty dollars up, or on a percentage. Here is an illustration.

A well-known Italian importer in New York City was owed the sum of three thousand dollars by an other Italian, to whom he had loaned the money without security and who had abused his confidence. Finding that the debtor intended to cheat him out of the money, although he could easily have raised the amount of the debt had he so wished, the importer sent for a Camorrist and told him the story.

"You shall be paid," said the Camorrist.

Two weeks later the importer was summoned to a cellar on Mott Street. The Camorrist conducted him down the stairs and opened the door. A candle-end flaring on a barrel showed the room crowded with rough-looking Italians and the debtor crouching in a corner. The Camorrist motioned to the terrified victim to seat himself by the barrel. No word was spoken and amid deathly silence the man obeyed. At last the Camorrist turned to the importer and said:

"This man owes you three thousand dollars, I believe."

The importer nodded.

"Pay what you justly owe," ordered the Camorrist.

Slowly the reluctant debtor produced a roll of bills and counted them out upon the barrel-head. At five hundred he stopped and looked at the Camorrist.

"Go on!" directed the latter.

So the other, with beads of sweat on his brow, continued until he reached the two thousand-dollar mark. Here the bills seemed exhausted. The importer by this time began to feel a certain reticence about his part in the matter—there might be some widows and orphans somewhere. The bad man looked inquiringly at him, and the importer mumbled something to the effect that he "would let it go at that." But the bad man misunderstood what his client had said and ordered the bankrupt to proceed. So he did proceed to pull out another thousand dollars from an inside pocket and add it to the pile on the barrel-head.

The Camorrist nodded, picked up the money, recounted it, and removed three hundred dollars, handing the rest to the importer.

"I have deducted the *camorra*," said he.

The bravos formed a line along the cellar to the door, and, as the importer passed on his way out, each removed his hat and wished him a *buona sera*. That importer certainly will never contribute toward a society for the purpose of eradicating the "Black Hand" from the city of New York. He says it is the greatest thing he knows.

But the genuine Camorrist or Mafius' would be highly indignant at being called a "Black Hander." His is an ancient and honorable profession; he is no common criminal, but a "man peculiarly sensitive in matters of honor," who for a consideration will see that others keep their honorable agreements.

The writer has received authoritative reports of three instances of extortion which are probably prototypes of many other varieties. The first is interesting because it shows a Mafius' plying his regular business and coming here for that precise purpose. There is a large wholesale lemon trade in New York City, and various growers in Italy compete for it. Not long past, a well-dressed Italian of good appearance and address rented an office in the World Building.

His name on the door bore the suffix "Agent." He was, indeed, a most effective one, and he secured practically all the lemon business among the Italians for his principals, for he was a famous *capo mafia,* and his customers knew that if they did not buy from the growers under his "protection" that something might, and very probably would, happen to their families in or near Palermo. At any rate, few of them took any chances in the matter, and his trip to America was a financial success.

In much the same way a notorious crook named Lupo forced all the retail Italian grocers to buy from him, although his prices were considerably higher than those of his competitors.

Even *Americans* have not been slow to avail themselves of Camorrist methods. There is a sewing-machine company which sells its machines to Italian families on the instalment plan. A regular agent solicits the orders, places the machines, and collects the initial dollar; but the moment a subscriber in Mulberry Street falls in arrears his or her name is placed on a black list, which is turned over by this enterprising business house to a "collector," who is none other than the leading Camorrist, "bad man," or Black Hander of the neighborhood. A knock on the door from his fist, followed by the connotative expression on his face, results almost uniformly in immediate payment of all that is due. Needless to say, he gets his *camorra*—a good one—on the money that otherwise might never be obtained.

It is probable that we should have this kind of thing among the Italians in America even if the Neapolitan Camorra and the Sicilian Mafia had never existed, for it is the precise kind of crime that seems to be spontaneously generated among a suspicious, ignorant, and superstitious people. The Italian is keenly alive to the dramatic, sensational, and picturesque; he loves to intrigue, and will imagine plots against him when none exists. If an Italian is late for a business engagement the man with whom he has his appointment will be convinced that there is some conspiracy afoot, even if his friend has merely been delayed by a block on the subway. Thus, he is a good subject for any wily Iago that happens along. The Italians in America are the most thrifty of all our immigrant citizens. In five years their deposits in the banks of New York State amounted to over one hundred million dollars. The local Italian crooks avail themselves of the universal fear of the vendetta, and let it be generally known that trouble will visit the banker or importer who does not "come across" handsomely. In most cases these Black Handers are ex-convicts with a pretty general reputation as "bad men." It is not necessary for them to phrase their demands. The tradesman who is honored with a morning call from one of this gentry does not need to be told the object of the visit. The mere presence of the fellow is a threat; and if it is not acceded to, the front of the building will probably be blown out by a dynamite bomb in the course of the next six weeks—whenever the gang of which the bad man is the leader can get around to it. And the bad man may perhaps have a still badder man who is preying upon *him*. Very often one of these leaders or bosses will run two or three groups, all operating at the same time. They meet in the back rooms of saloons behind locked doors, under pretence of wishing to play a game of *zecchinetta* unmolested, or in the gloaming in the middle of a city park or undeveloped property on the outskirts. There the different members of the gang get their orders and stations, and perhaps a few dollars advance wages. It is naturally quite impossible to guess the number of successful and unsuccessful attempts at blackmail among Italians, as the amount of undiscovered crime throughout the country at large is incomputable. No word of it comes from the lips of the victims, who are in mortal terror of the vendetta—of meeting some casual stranger on the street who will significantly draw the forefinger of his right hand across his throat.

There is rather more chance to find and convict a kidnapper than a bomb-thrower, so that, as a means of extortion, child-snatching is less popular than the mere demand for the victim's money or his life. On the other hand it is probably much more effective in accomplishing its result. But America will not stand for kidnapping, and, although the latter occurs occasionally, the number of cases is insignificant compared with those in which dynamite is the chief factor. In 1908, there were forty-four bomb outrages reported in New York City. There were seventy arrests and nine convictions. During the present year (1911) there have been about sixty bomb cases, but there have been none since September 8, since Detective Carrao captured Rizzi, a *picciott'*, in the act of lighting a bomb in the hallway of a tenement house.

This case of Rizzi is an enlightening one for the student of social conditions in New York, for Rizzi was no Orsini, not even a Guy Fawks, nor yet was he an outlaw in his own name. He was simply a *picciott'* (pronounced "pish-ot") who did what he was told in order that some other man who did know why might carry out a threat to blow up somebody who had refused to be blackmailed. It is practically impossible to get inside the complicated emotions and motives that lead a man to become an understudy in dynamiting. Rizzi probably got well paid; at any rate, he was constantly demonstrating his fitness "to do big things in a big way," and be received into the small company of the elect—to go forth and blackmail on his own hook and hire some other *picciott'* to set off the bombs.

Whoever the *capo maestra* that Rizzi worked for, he was not only a deep-dyed villain, but a brainy one. The gang hired a store and pretended to be engaged in the milk business. They carried the bombs in the steel trays holding the milk bottles and cans, and, in the costume of peaceful vendors of the lacteal fluid, they entered the tenements and did their damage to such as failed to pay them tribute. The manner of his capture was dramatic. A real milkman for whom Rizzi had worked in the past was marked out for slaughter. He had been blown up twice already. While he slept his wife heard some one moving in the hall. Looking out through a small window, she saw the ex-employee fumble with something and then turn out the gas on the landing. Her husband, awakened by her exit and return, asked sleepily what the matter was.

"I saw Rizzi out in the hall," she answered. "It was funny—he put out the light!"

In a moment the milkman was out of bed and gazing, with his wife, into the street. They saw Rizzi come down with his tray and pass out of sight. So did a couple of Italian detectives from Head-quarters who had been following him and now, at his very heels, watched him enter another tenement, take a bomb from his tray, and ignite a time fuse. They caught him with the thing alight in his hand. Meanwhile the other bomb had gone off and blown up the milkman's tenement.

There is some ancient history in regard to these matters which ought to be retold in the light of modern knowledge; for example, the case of Patti, the Sicilian banker. He had a prosperous institution in which were deposited the earnings of many Italians, poor and wealthy. Lupo's gang got after him and demanded a large sum for "protection." But Patti had a disinclination to give up, and refused. At the time his refusal was attributed to high civic ideals, and he was lauded as a hero. Anyhow, he defied the Mafia, laid in a stock of revolvers and rifles, and rallied his friends around him. But the news got abroad that Lupo was after Patti, and there was a run on Patti's bank. It was a big run, and some of the depositors gesticulated and threatened—for Patti couldn't pay it all out in a minute. Then there was some kind of a row, and Patti and his friends (claiming that the Mafia had arrived) opened fire, killing one man and wounding others. The newspapers praised Patti for a brave and stalwart citizen.

Maybe he was. After the smoke had cleared away, however, he disappeared with all his depositors' money, and now it has been discovered that the man he killed was a depositor and not a Black Hander. The police are still looking for him.

This case seems a fairly good illustration of the endless opportunity for wrong-doing possible in a state of society where extortion is permitted to exist—where the laws are not enforced—where there is a "higher" sanction than the code. Whether Patti was a good or a bad man, he might easily have killed an enemy in revenge and got off scot-free on the mere claim that the other was blackmailing him; just as an American in some parts of our country can kill almost anybody and rely on being acquitted by a jury, provided he is willing to swear that the deceased had made improper advances to his wife.

The prevention of kidnapping, bomb-throwing, and the other allied manifestations of the Black Hand depends entirely upon the activity of the police—particularly the Italian detectives, who should form an inevitable part of the force in every large city. The fact of the matter is that we never dreamed of a real "Italian peril" (or, more accurately, a real "Sicilian peril") until about the year 1900. Then we woke up to what was going on—it had already gone a good way—

and started in to put an end to it. Petrosino did put an end to much of it, and at the present time it is largely sporadic. Yet there will always be a halo about the heads of the real Camorrists and Mafiusi—the Alfanos and the Rapis—in the eyes of their simple-minded countrymen in the United States.

Occasionally one of these big guns arrives at an American port of entry, coming first-class via Havre or Liverpool, having made his exit from Italy without a passport. Then the Camorrists of New York and Brooklyn get busy for a month or so, raising money for the boys at home and knowing that they will reap their reward if ever they go back. The popular method of collecting is for the principal capo maestra, or temporary boss of Mulberry Street, to "give" a banquet at which all "friends" must be present—at five dollars per head. No one cares to be conspicuous by reason of his absence, and the hero returns to Italy with a large-sized draft on Naples or Palermo.

Meanwhile the criminal driven out of his own country has but to secure transportation to New York to find himself in a rich field for his activities; and once he has landed and observed the demoralization often existing from political or other reasons in our local forces of police and our uncertain methods of administering justice (particularly where the defendant is a foreigner), he rapidly becomes convinced that America is not only the country of liberty but of license—to commit crime.

Most Italian crooks come to the United States not merely some time or other, but *at intervals*. Practically all of the Camorrist defendants on trial at Viterbo have been in the United States, and all will be here soon again, after their discharge, unless steps are taken to keep them out. Luckily, it is a fact that so much has been written in American newspapers and periodicals in the past few years about the danger of the Black Hand and the criminals from south Italy that the authorities on the other side have allowed a rumor to be circulated that the climate of *South* America is peculiarly adapted to persons whose lungs have become weakened from confinement in prison. In fact, at the present time more Italian criminals seek asylum in the Argentine than in the United States. Theoretically, of course, as no convict can procure a passport, none of them leave Italy at all—but that is one of the humors of diplomacy. The approved method among the continental countries of Europe of getting rid of their criminals is to induce them to "move on." A lot of them keep "moving on" until they land in America.

Of course, the police should be able to cope with the Black Hand problem, and, with a free use of Italian detectives who speak the dialects and know their quarry, we may gradually, in the course of fifteen years or so, see the entire disappearance of this particular criminal phenomenon. But an ounce of prevention is worth several tons of cure. Petrosino claimed—not boastfully—that he could, with proper deportation laws behind him, exterminate the Black Hand throughout the United States in *three* months.

But, as far as the future is concerned, a solution of the problem exists—a solution so simple that only a statesman could explain why it has not been adopted long years ago. The statutes in force at Ellis Island permit the exclusion of immigrants who have been guilty of crimes involving moral turpitude in their native land, but do not provide for the compulsory production of the applicants' "penal certificate" under penalty of deportation. Every Italian emigrant is obliged to secure a certified document from the police authorities of his native place, giving his entire criminal record or showing that he has had none, and without it he can not obtain a passport. For several years efforts have been made to insert in our immigration laws a provision that every immigrant from a country issuing such a certificate *must* produce it before he can be sure of admission to the United States. If this proposed law should be passed by Congress the exclusion of Italian criminals would be almost automatic. But if it or some similar provisions fails to become law, it is not too much to say that we may well anticipate a Camorra of some sort in every locality in our country having a large Italian population. Yet government moves slowly, and action halts while diplomacy sagely shakes its head over the official cigarette.

A bill amending the present law to this effect has received the enthusiastic approval of the immigration authorities and of the President. At first the Italian officials here and abroad expressed themselves as heartily in sympathy with this proposed addition to the excluded classes; but, once the bill was drawn and submitted to Congress, some of these same officials entered violent protests against it, on the ground that such a provision discriminated unfairly against Italy and the other countries issuing such certificates. The result of this has been to delay all action on the bill which is now being held in committee. Meanwhile the Black Hander is arriving almost daily, and we have no adequate laws to keep him out.